Bureau of Customs and Border Protection

General Notices

GRANT OF "LEVER-RULE" PROTECTION

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

ACTION: Notice of grant of "Lever-Rule" protection.

SUMMARY: Pursuant to 19 CFR § 133.2(f), this notice advises interested parties that Customs & Border Protection has granted "Lever-rule" protection to Dornier medical Systems, Inc. (known also as Dornier MedTech America, Inc.) For its Dornier EPOS® Ultra orthopedic shockwave device (the EPOS® Ultra).

Notice of the receipt of an application for "Lever-rule" protection was published in the Customs Bulletin on October 2, 2002.

FOR FURTHER INFORMATION CONTACT: Joseph E. Howard, Esq., Intellectual Property Rights Branch, Office of Regulations & Rulings, (202) 572–8701.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that Customs & Border Protection has granted "Lever-rule" protection for the Dornier EPOS® Ultra Orthopedic shockwave device for the European version of the Dornier EPOS Ultra.

Customs & Border Protection (CBP) has determined that the European version of the EPOS® Ultra Orthopedic Shockwave device differs from the U.S. version of the medical device in numerous individual ways that in the aggregate establish that the European version of the medical device is materially, physically different from the U.S. version.

In *Societe Des Produits Nestle, S.A. v. Casa Helvetia, Inc.*, 982 F.2d 633, 641 (1st Cir. 1992), the First Federal Circuit found that material differences exist where the "bundle of characteristics that are associated with the mark" vary in the gray market version of the goods. The Third Federal Circuit noted that characteristics of the gray market goods that are not shared by the trademark owner's goods are

likely to affect consumers' perceptions regarding the desirability of the goods. *Iberia Foods Corp. v. Roland Romero, Jr.*, 150 F3d. 298, 302 (3rd Cir. 1998).

The U.S. version of the orthopedic shockwave device differs from the European version of the medical device in a host of ways that are likely to affect consumers' perceptions regarding the products here in issue. The Dornier EPOS® Ultra Orthopedic shockwave device has FDA approval, the European version does not; the U.S. version employs certain safety features not found on the European version; the U.S. version uses different software than the European version; the U.S. version is powered by different levels of voltage and has different power settings than the European version; the U.S. version has a safety plug that is approved by the Underwriters Laboratory® while the European version does not; and, the Operating Manual of the U.S. version differs from the Operating Manual of the European version in that manual that accompanies the U.S. version details the FDA approved uses for the medical device while the European does not since it does not have FDA approval.

These numerous physical differences may reasonably be considered as relevant to a decision about whether to purchase a product. In the Eleventh Federal Circuit, in the case styled *Davidoff & CIE v. PLD Int'l Corp.*, 263 F.3d 1297, 1302 (2001), the court found that physical differences (i.e., etching fragrance bottles to remove batch codes) were material because consumers may conclude that the product has been tampered with. This rationale suggests that consumers would consider the host of differences under consideration in this case relevant to their decision about whether to purchase the product because the gray market product is lacking in numerous features found on the Dornier EPOS® Ultra Orthopedic Shockwave device that directly impact the safety and operation of the medical device..

An additional factor that constitutes a material difference between the products in issue is the approval granted to the device by the Food and Drug Administration. The gray market Dornier EPOS Ultra does not have such approval. By authorizing the sale, distribution, and use of the medical device for prescription use in accordance with FDA Regulations (21 CFR § 801.109), the FDA has certified that such use does not present a danger to the consuming public. The gray market medical device was never intended to comply with the FDA Regulations governing its approval of such medical devices. This certainly constitutes a difference that is both material (bears on product safety and fitness for the purpose for which it may be purchased) and physical (absence of safety features required to comply with FDA Regulations).

ENFORCEMENT

Importation of the subject gray market Dornier EPOS Ultra medical device is restricted, unless the labeling requirements of 19 CFR § 133.23(b) are satisfied.

Dated: November 17, 2003

GEORGE FREDERICK MCCRAY,
Chief,
Intellectual Property Rights Branch Office of Regulations and Rulings.

Performance Review Board—Appointment of Members

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

ACTION: General Notice.

SUMMARY: This notice announces the appointment of the members of the U.S. Customs and Border Protection Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB's is to review performance appraisals for senior executives and to make recommendations to the appointing authority regarding proposed performance ratings, bonuses, and other related personnel actions.

EFFECTIVE DATE: November 1, 2003.

FOR FURTHER INFORMATION CONTACT: Robert M. Smith, Assistant Commissioner, Human Resources Management, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Room 2.4–A, Washington, D.C. 20229, Telephone (202) 927–1250.

Background: There are two PRB's in U.S. Customs and Border Protection.

Performance Review Board 1

The purpose of this Board is to review the performance appraisals and proposed related personnel actions for senior executives who report directly to the Deputy Commissioner or the Commissioner of Customs and Border Protection. The members are:

Kay Frances Dolan, Director, Departmental Human Resources Policy, Department of Homeland Security.

John Dooher, Senior Assistant Director, Washington Office, Federal Law Enforcement Training Center, Department of the Treasury.

Carla F. Kidwell, Associate Director for Technology, Bureau of Engraving and Printing, Department of the Treasury.

Kenneth R. Papaj, Deputy Commissioner, Financial Management Service, Department of the Treasury.

Richard Williams, Director, Program Analysis and Evaluation, Department of Homeland Security.

Performance Review Board 2

The purpose of this Board is to review the performance appraisals and proposed related personnel actions for all senior executives *except* those who report directly to the Deputy Commissioner or the Commissioner of U.S. Customs and Border Protection. The members are:

Assistant Commissioners:

Jayson P. Ahern, Field Operations.
Marjorie L. Budd, Training and Development.
Gustavo DeLaVina, Border Patrol.
William A. Keefer, Internal Affairs.
Dennis H. Murphy, Public Affairs.
John E. Eichelberger, Finance/CFO.
Michael T. Schmitz, Regulations and Rulings.
Robert M. Smith, Human Resources Management.
Deborah J. Spero, Strategic Trade.

Dated: November 13, 2003.

Robert C. Bonner,

Commissioner.

[Published in the Federal Register, November 19, 2003 (68 FR 65303)]

Recordation of Trade name: "DISPALCA"

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "DISPALCA". The trade name is owned by Caribbean Imports, Inc., a Florida corporation.

The application states that the trade name "Dispalca" is used in connection with the advertising and sale of pre-packaged seafood products in the United States, which are manufactured in Venezuela and Colombia and imported from South America and the Caribbean.

The applicant states that the only foreign entity entitled to use the "DISPALCA" trade name within the United States is Dispalca, located at Avenida 17, Los Haticos, Maracaibo, Venezuela. The company's use of the trade name is purportedly limited to packaging and

shipping products to Caribbean Imports, Inc. The applicant also states that the trade name "DISPALCA" is solely and exclusively used by Caribbean Imports, Inc.

Before final action is taken on the application, consideration will be give to any relevant data, views, or arguments, submitted in writing, by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATE: Comments must be received or on before January 20, 2004.

ADDRESS: Written comments should be addressed to U.S. Customs and Border Protection, Attention: Office of Regulations & Rulings, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: La Verne Watkins, Intellectual Property Rights Branch at (202) 572–8710.

Dated: November 11, 2003.

George Frederick McCray, Esq.

Chief, Intellectual Property Rights Branch.

[Published in the Federal Register, November 19, 2003 (68 FR 65304)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, November 19, 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.

SANDRA L. BELL,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

MODIFICATION AND REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF RESORCINOL FORMALDEHYDE LATEX TREATED FABRIC

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

ACTION: Notice of modification and revocation of tariff classification ruling letters and revocation of treatment relating to the classification of fabrics treated with resorcinol formaldehyde latex solution.

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 the Bureau of Customs and Border Protection (CBP) is modifying one ruling and revoking four rulings relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain woven fabric treated with resorcinol formaldehyde latex (RFL). Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published October 1, 2003, in the Customs Bulletin, Volume 37, Number 40. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 1, 2004.

FOR FURTHER INFORMATION CONTACT: Timothy Dodd, Textiles Branch: (202) 572–8819.

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 the Bureau of Customs and Border Protection (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, a notice was published in the October 1, 2003, Customs Bulletin, Volume 37, Number 40, proposing to modify one ruling and to revoke four rulings relating to the tariff classification of certain woven fabric treated with resorcinol formaldehyde latex (RFL). As stated in the notice of proposed actions, the notice covers any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, an internal advice memorandum or decision or a protest review decision) on the merchandise subject to this notice, should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (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 HTSUS. Any person involved with substantially identical merchandise should have advised CBP during this comment 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 importers or their agents for importations of merchandise subsequent to this notice.

In Headquarters Ruling Letter (HQ) 087266 and HQ 087267, both dated August 16, 1990, and in New York Ruling Letter (NY) E87150, dated May 5, 2000, NY D83707, dated October 22, 1998, and NY 802177, dated February 2, 1995, CBP classified certain fabrics treated with resorcinol formaldehyde latex (RFL) in subheading 5906.99, HTSUSA, as rubberized textile fabrics.

It is now CBP's determination that the proper classification for the fabrics treated with RFL is either subheading 5407.42.00, HTSUSA, as woven fabrics of synthetic filament yarn or subheading 5208.32.30, HTSUSA, as woven fabrics of cotton. HQ 966518 (Attachment A) revoking HQ 087266; HQ 966519 (Attachment B) revoking HQ 087267; (HQ) 966534 (Attachment C) modifying NY E87150; HQ 966536 (Attachment D) revoking NY D83707; and HQ 966535 (Attachment E) revoking NY 802177; are set forth in the Attachments to this document.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY E87150 and revoking HQ 087266, HQ 087267, NY D83707 and NY 802177, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analyses set forth in Proposed HQ 966534, HQ 966518, HQ 966519, HQ 966535 and HQ 966536, *supra.* Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise.

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

DATED: November 6, 2003

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966518
November 6, 2003
CLA–2 RR:CR:TE
CATEGORY: Classification
TARIFF NO.: 5208.32.3040

MS. DONNA TROIANO, TRAFFIC MANAGER
TEJIN SHOJI (AMERICA), INC.
1412 Broadway, 21st Floor
New York, NY 10018

RE: Revocation of Headquarters Ruling Letter 087266, dated August 16, 1990; Classification of Cotton Plain Woven Fabric Coated with Solution Composed of Resorcin, Formalin and Styrene-Butadiene Rubber

DEAR MS. TROIANO:

This letter concerns Headquarters Ruling Letter (HQ) 087266, issued to you on August 16, 1990, regarding the tariff classification of fabric treated with a solution containing styrene-butadiene rubber (SBR) under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, the Bureau of Customs and Border Protection (CBP) has determined that the classification for the four samples considered was incorrect. For the reasons that follow, this ruling revokes HQ 087266.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of HQ 087266 was published on October 1, 2003, in the Customs Bulletin, Volume 37, Number 40. As explained in the notice, the period within which to submit comments on this proposal was until October 31, 2003. No comments were received in response to this notice.

FACTS:

The merchandise under consideration consists of four styles of plain cotton woven fabrics, identified as style numbers D2W, D3W, D5W and D6W. In Headquarters Ruling Letter 087266, we described the merchandise as follows.

> The merchandise in question consists of four plain woven cotton rubberized fabrics (style nos. D2W, D3W, D5W and D6W). The fabrics are made in and imported from Singapore and are used as carcass materials in the manufacture of machine belting for automotive and industrial equipment.
>
> Style D2W weighs 6.4 ounces per square yard; style D3W, 7.8 ounces per square yard; style D5W, 10.9 ounces per square yard; and style D6W, 16.4 ounces per square yard. All four fabrics are unbleached.
>
> The fabrics have been dipped in a rubber solution containing resorcin, formalin, styrene-butadiene rubber (SBR) and water. The purpose of the rubber treatment is to facilitate the adhesion of the fabrics, which ultimately form the top and bottom layers of finished belting, to other materials used in the manufacture of belting such as cord fabric and rub-

ber sheeting. The dipping solution is 5.68 percent rubber. As a percentage of total fabric weight, style D2W is 3.36 percent SBR, style D3W is 2.58 percent, style D5W is 2.33 percent and style D6W, 2.43 percent.

A Customs laboratory report on the fabrics states that the coatings contain both a synthetic rubber (SBR type) and a synthetic polymer.

In HQ 087266, we classified the four fabrics considered under subheading 5906.99.1000, HTSUSA, which provides for "rubberized textile fabrics, other than those of heading 5902, other, other, of cotton, other."

In your letter, dated August 3, 1990, you provided the following information regarding the composition of the dipping solution:

Dipping Solution

Resorcinol	:	2.04%
Formalin	:	1.36%
Latex (SBR Type)	:	12.92%
Water	:	83.62%
Neocoal SW	:	0.06%
Total		100%

Based on visual examination of the samples and a review of the ingredients used to make the dipping solution, the solution used to treat the four fabrics is effectively a variety of resorcinol formaldehyde latex (RFL).

ISSUE:

What is the proper classification of the treated fabrics under the HTSUSA?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). 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 taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings.

Heading 5906, HTSUSA, provides for rubberized textile fabrics, other than those of heading 5902 (tire cord fabric). Note 4, Chapter 59, HTSUSA, provides in pertinent part:

> For the purposes of heading 5906, the expression "rubberized textile fabrics" means:
>
> (a) Textile fabrics impregnated, coated, covered or laminated with rubber:
>
> i) Weighing not more than 1,500 g/m^2; or
>
> (ii) Weighing more than 1,500 g/m^2 and containing more than 50 percent by weight of textile material;

The term "rubber" is not defined in either the notes to Section XI (Textiles and Textile Articles) or the notes to chapter 59, HTSUSA. However, Note 1

to chapter 40 HTSUSA, states in relevant part that "Except where the context otherwise requires, throughout the tariff schedule the expression 'rubber' means the following products, whether or not vulcanized or hard: . . . natural rubber, . . . synthetic rubber." Note 4(a) to chapter 40 states that in Note 1 to chapter 40, the expression "synthetic rubber" means:

> Unsaturated synthetic substances which can be irreversibly transformed by vulcanization with sulfur into non-themoplastic substances which, at a temperature between 18° and 29° C, will not break on being extended to three times their original length and will return, after being extended twice their original length, within a period of 5 minutes, to a length not greater than 1½ times their original length. For purposes of this test, substances necessary for the cross-linking, such as vulcanizing activators or accelerators, may be added; the presence of substances as provided for by note 5(b)(ii) and (iii) is also permitted. However, the presence of any substances not necessary for the cross-linking, such as extenders, plasticizers and fillers, is not permitted.

Thus, to consider a substance to be a rubber, Note 4(a) sets forth a two-pronged test. First, the substance must be vulcanized[1] (not merely cross-linked). Second, the vulcanized material must satisfy an extension-recovery test as described in Note 4(a). CBP has consistently applied this test to determine whether a substance is a "rubber" for tariff classification purposes. *See e.g.*, HQ 964704, dated April 11, 2001; HQ 963528, dated July 27, 2000; and HQ 956863, dated May 2, 1995.

In your original submission, you described the solution used to treat the fabrics as containing resorcinol, formalin and SBR latex. This formulation produces a resorcinol formaldehyde latex (RFL), which is a commonly used treatment for rubber to fabric adhesions generally used on high-tenacity synthetic fabric to facilitate adhesion between fabric and rubber by improving the "grab" of rubber to textile. RFL is applied at the fabric mill where the treated fabric is dried and heat set at the same time, producing an orange tint to the fabric. However, a more thorough examination of the physical characteristics of RFL reveals that RFL is not in fact a rubber.

The word "latex" has different meanings. The American Heritage Dictionary of the English Language, Fourth Edition (2000) defines "latex" as follows:

1. The colorless or milky sap of certain plants, such as the poinsettia or milkweed, that coagulates on exposure to air.
2. An emulsion of rubber or plastic globules in water, used in paints, adhesives, and various synthetic rubber products.

Concerning RFL, CBP finds that "latex" is a descriptive term signifying that the resorcinol formaldehyde solution is in the form of an emulsion containing some amount of synthetic rubber or plastic products. Styrene butadiene rubber (SBR) is a synthetic latex made by emulsion polymerization from styrene-butadiene. The Columbia Encyclopedia, Sixth Edition (2001). The typical SBR polymer consists of 23 percent styrene and 77 per-

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[1] Vulcanization produces chemical links between the loosely coiled polymeric chains; elasticity occurs because the chains can be stretched and the cross-links cause them to spring back when the stress is released. The Columbia Encyclopedia, Sixth Edition (2001).

cent butadiene by weight. Kirk-Othmer, Encyclopedia of Chemical Technology (3rd ed.), 612. Accordingly, a large amount of butadiene, which gives the copolymer its rubber characteristics, and the absence of styrene chains, which are plastic in character, is indicative of SBR. Thus, a true SBR would readily satisfy the requirements of note 4(a). In HQ 088273, dated August 8, 1991, CBP found that upholstery fabrics coated with a 48 percent styrene and 52 percent butadiene block polymer, described as an SBR, were not properly classified in heading 5906, as a rubberized textile fabric.

During our review of HQ 087266, the Customs Laboratory determined that the SBR present in the solution consisted approximately of 60 percent styrene (plastic-like qualities) and 40 percent butadiene (rubber-like qualities). Prior to the ruling's issuance in 1990, CBP performed laboratory tests on the treated fabric samples without separately testing the RFL solution prior to it being applied to the fabric. The laboratory analyses were made in part by infrared spectrometry, wherein the spectrograph bands or peaks were compared with known reference bands and appeared to indicate the presence of an SBR type of rubber and a synthetic polymer. However, the mere presence of an SBR in the treated fabric does not signify that the solution used to treat the fabric is actually a rubber for tariff classification purposes. For treated fabric to be considered a rubberized textile fabric, the RFL solution must first be considered a rubber by satisfying the requirements set forth in Note 4(a) to chapter 40, HTSUSA.

Recently, CBP reviewed independent laboratory test results on resorcinol formaldehyde latex (RFL) solution. Based on the commercial applications for RFL, we presume that manufacturers use essentially the same or similar composition of RFL on high-tenacity synthetic fabric. The laboratory followed the vulcanization and other testing requirements set forth in Note 4(a) to chapter 40, HTSUSA, as described above. After testing and analysis, the laboratory concluded that RFL, without additives, fails to pass the vulcanization and extensibility tests. RFL with additives (a sulfur-based curative system normally used in making RFL fabric) passes the vulcanization test (the first prong) but fails the extensibility test (the second prong). To be considered a "synthetic rubber," RFL must pass both prongs of the test. Because RFL, with or without additives, fails to pass the extensibility test set forth in Note 4(a) to chapter 40, HTSUSA, it cannot be considered a "synthetic rubber." Since RFL is not a "synthetic rubber," fabric treated with RFL cannot be classified in heading 5906, HTSUSA, as a rubberized textile fabric.

Based on the above analysis, we presume that the classification of the fabrics in HQ 087266 under subheading 5906.99.1000, as rubberized textile fabrics, was incorrect. This presumption is rebuttable if it can be demonstrated that the solution does indeed meet the recovery, elongation and vulcanization requirements set forth in Note 4(a). This finding is consistent with HQ 089454, dated October 3, 1991, wherein Customs found styrene-butadiene rubber (SBR) that coated nylon fabric was precluded from consideration as rubber for heading 5906 purposes. *See also* 088273, dated August 8, 1991.

Neither are the treated fabrics classifiable in heading 5903, HTSUSA, which covers "textile fabrics impregnated, coated, covered or laminated with plastics," because the fabrics do not satisfy the requirements of Note 2(a)(1) to Chapter 59. Note 2(a)(1) specifies that "[t]extile fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually

chapters 50 to 55, 58 or 60)" are not classifiable in heading 5903. Note 2(a)(1) also provides that "no account should be taken of any resulting change of color." In this case, the coating of RFL is not visible to the naked eye and the change of color cannot be taken into account.

Since the subject merchandise is not classifiable *eo nomine* as either rubberized textile fabric (heading 5906) or as plastic coated textile fabric (heading 5903), it falls to be classified at GRI 1 as a woven fabric.

Heading 5208, HTSUSA, provides for "Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing not more than 200 g/m2." The EN to heading 5208 provide that "[c]otton fabrics are produced in a great variety and are used according to their characteristics, for making clothing, household linen, bedspreads, curtains, other furnishing articles, etc." Thus, the provision is not limited by its terms to woven fabrics for any particular type of application. Accordingly, cotton fabric treated with RFL is properly covered under heading 5208, HTSUSA.

The next consideration is whether or not the RFL fabric is "dyed" according to the terms of the HTSUSA. Based on physical examination of the samples under consideration, the styles are tinted orange as a result of the RFL treatment process. Subheading Note 1(g) to Section XI of the HTSUSA defines "dyed woven fabric" as woven fabric which:

(i) Is dyed a single uniform color other than white (unless the context otherwise requires) or has been treated with a colored finish other than white (unless the context otherwise requires), in the piece; or

(ii) Consists of colored yarn of a single uniform color.

The Dictionary of Fiber & Textile Technology (1990) defines "dyeing" as "[a] process of coloring fibers, yarns, or fabrics with either natural or synthetic dyes." Textile "dyes" are defined as "[s]ubstances that add color to textiles. They are incorporated by chemical reaction, absorption, or dispersion." Accordingly, with respect to dyeing, no particular intent or purpose is required. It is simply a treatment that colors a treated material.

In this situation, according to Note 1(g), the cotton fabric is treated with RFL solution which alters the color of the fabrics to a uniform shade of light orange. Because they are colored a single uniform color other than white or treated with a color finish other than white, the RFL treated fabrics are considered "dyed." This finding is consistent with NY 810505, dated May 19, 1995, wherein CBP found glass cord received its color from an RFL treatment. Likewise, in HQ 089454, dated October 3, 1991, CBP ruled that nylon fabric coated with SBR is classified in heading 5407.42.0060, HTSUSA, as dyed woven fabric of filament yarn.

HOLDING:

HQ 087266, dated August 16, 1990, is hereby REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

The fabrics identified by style numbers D2W, D3W, D5W and D6W are classified in subheading 5208.32.3040, HTSUSA, which provides for "Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing not more than 200 g/m2: Dyed: Plain weave, weighing not more than 100 g/m2: Other: Of number 42 or lower number, sheeting." The general one column rate of duty is 7.3 percent and the textile quota category 313.

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 Textile Status Report for Absolute Quotas, previously available on the Customs Electronic Bulletin Board (CEBB), is available on the CBP website at www.cbp.gov.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966519
November 6, 2003
CLA–2 RR:CR:TE
CATEGORY: Classification
TARIFF NO.: 5407.42.0030

MR. ROBERT GARVIN
NIPPON EXPRESS U.S.A., INC.
Chicago Ocean Cargo Branch
950 N. Edgewood Avenue
Wood Dale, Illinois 60191

RE: Revocation of Headquarters Ruling Letter 087267, dated August 16, 1990; Classification of Woven Polyester Fabric Dipped in Resorcin, Formalin and Styrene-Butadiene Rubber

DEAR MR. GARVIN:

This letter concerns Headquarters Ruling Letter (HQ) 087267, issued to you on August 16, 1990, regarding the tariff classification of fabric treated with a solution containing styrene-butadiene rubber (SBR) under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, the Bureau of Customs and Border Protection (CBP) has determined that the classification for the three samples considered was incorrect. For the reasons that follow, this ruling revokes HQ 087267.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of HQ 087267 was published on October 1, 2003, in the Customs Bulletin, Volume 37, Number 40. As explained in the notice, the period within which to submit comments on this proposal was until October 31, 2003. No comments were received in response to this notice.

FACTS:

The merchandise under consideration consists of three samples of leno weave, polyester fabric, dipped in a solution. The fabric is used in the manufacture of reinforced water hoses for the automotive industry. In HQ 087267, CBP described the merchandise as follows:

> The fabrics come in 80mm, 130mm and 150 mm widths, weigh 200 g/m, and are imported in 210m rolls. The three fabrics are made from high tenacity, multiple yarns with a tenacity of 74 centinewtons per tex. The yarn size is 1,000 D/1 + 1,000 D/1 multiple. The thread count is 230 + 230/M in the warp and 410/M in the filling.
>
> The fabrics are dipped in a solution containing Resorine [Resorcin] (1.8%), Formalin (3.6%), styrene-butadiene rubber (29.2%), melamine (12.4%), water (48.8%) and other materials, including caustic soda (4.1%), for 60 seconds at a temperature of 150 degrees Celsius, and then are dried at 205 degrees Celsius for approximately 36 seconds.

In HQ 087267, we classified the three fabrics considered under subheading 5906.99.2500, HTSUSA, which provides for "rubberized textile fabrics, other than those of heading 5902, other, other, of man-made fibers, other."

In your letter, received by CBP on September 5, 1989, you asserted that the "[r]atio of the rubber coating (dipping process) is approximately 10% of the basic fabric weight." While your statement was presented in the FACTS section of HQ 087267, we now note that the CBP laboratory analysis conducted at the time determined that the actual weight of the solution was approximately 1 percent of the fabric weight. We further note that in your letter describing the merchandise, you stated that the dipping solution contained "Styrene Butadience [*sic*] Rubber **Latex**." (*Emphasis added*). Based on visual examination of the samples and a review of the ingredients used to make the dipping solution, the solution used to treat the three fabrics is effectively a variety of resorcinol formaldehyde latex (RFL).

ISSUE:

What is the proper classification of the treated fabrics under the HTSUSA?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). 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 taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings.

Heading 5906, HTSUSA, provides for rubberized textile fabrics, other than those of heading 5902 (tire cord fabric). Note 4, Chapter 59, HTSUSA, provides in pertinent part:

> For the purposes of heading 5906, the expression "rubberized textile fabrics" means:

> (a) Textile fabrics impregnated, coated, covered or laminated with rubber:
>
> i) Weighing not more than 1,500 g/m^2; or
>
> (ii) Weighing more than 1,500 g/m^2 and containing more than 50 percent by weight of textile material;

The term "rubber" is not defined in either the notes to Section XI (Textiles and Textile Articles) or the notes to chapter 59, HTSUSA. However, Note 1 to chapter 40 HTSUSA, states in relevant part that "Except where the context otherwise requires, throughout the tariff schedule the expression 'rubber' means the following products, whether or not vulcanized or hard: . . . natural rubber, . . . synthetic rubber." Note 4(a) to chapter 40 states that in Note 1 to chapter 40, the expression "synthetic rubber" means:

> Unsaturated synthetic substances which can be irreversibly transformed by vulcanization with sulfur into non-themoplastic substances which, at a temperature between 18° and 29° C, will not break on being extended to three times their original length and will return, after being extended twice their original length, within a period of 5 minutes, to a length not greater than 1½ times their original length. For purposes of this test, substances necessary for the cross-linking, such as vulcanizing activators or accelerators, may be added; the presence of substances as provided for by note 5(b)(ii) and (iii) is also permitted. However, the presence of any substances not necessary for the cross-linking, such as extenders, plasticizers and fillers, is not permitted.

Thus, to consider a substance to be a rubber, Note 4(a) sets forth a two-pronged test. First, the substance must be vulcanized[1] (not merely cross-linked). Second, the vulcanized material must satisfy an extension-recovery test as described in Note 4(a). CBP has consistently applied this test to determine whether a substance is a "rubber" for tariff classification purposes. *See e.g.*, HQ 964704, dated April 11, 2001; HQ 963528, dated July 27, 2000; and HQ 956863, dated May 2, 1995.

In HQ 087267, it was stated that the solution used to treat the fabrics contained resorcin, formalin and SBR latex. This formulation produces a resorcinol formaldehyde latex (RFL), which is a commonly used treatment for rubber to fabric adhesions generally used on high-tenacity synthetic fabric to facilitate adhesion between fabric and rubber by improving the "grab" of rubber to textile. RFL is applied at the fabric mill where the treated fabric is dried and heat set at the same time, producing an orange tint to the fabric. However, a more thorough examination of the physical characteristics of RFL reveals that RFL is not in fact a rubber.

The word "latex" has different meanings. The American Heritage Dictionary of the English Language, Fourth Edition (2000) defines "latex" as follows:

> 1. The colorless or milky sap of certain plants, such as the poinsettia or milkweed, that coagulates on exposure to air.

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[1] Vulcanization produces chemical links between the loosely coiled polymeric chains; elasticity occurs because the chains can be stretched and the cross-links cause them to spring back when the stress is released. The Columbia Encyclopedia, Sixth Edition (2001).

2. An emulsion of rubber or plastic globules in water, used in paints, adhesives, and various synthetic rubber products.

Concerning RFL, CBP finds that "latex" is a descriptive term signifying that the resorcinol formaldehyde solution is in the form of an emulsion containing some amount of synthetic rubber or plastic products. Styrene butadiene rubber (SBR) is a synthetic latex made by emulsion polymerization from styrene-butadiene. The Columbia Encyclopedia, Sixth Edition (2001). The typical SBR polymer consists of 23 percent styrene and 77 percent butadiene by weight. Kirk-Othmer, Encyclopedia of Chemical Technology (3rd ed.), 612. Accordingly, a large amount of butadiene, which gives the copolymer its rubber characteristics, and the absence of styrene chains, which are plastic in character, is indicative of SBR. Thus, a true SBR would readily satisfy the requirements of note 4(a). In HQ 088273, dated August 8, 1991, CBP found that upholstery fabrics coated with a 48 percent styrene and 52 percent butadiene block polymer, described as an SBR, were not properly classified in heading 5906, as a rubberized textile fabric.

During our review of HQ 087267, the Customs Laboratory determined that the SBR present in the solution consisted approximately of 60 percent styrene (plastic-like qualities) and 40 percent butadiene (rubber-like qualities). CBP had performed laboratory tests on the treated fabric samples without separately testing the RFL solution prior to it being applied to the fabric. Those laboratory analyses were made in part by infrared spectrometry, wherein the spectrograph bands or peaks were compared with known reference bands and appeared to indicate the presence of a type of SBR and a synthetic polymer. However, the mere presence of an SBR in the treated fabric does not signify that the solution used to treat the fabric is actually a rubber for tariff classification purposes. For treated fabric to be considered a rubberized textile fabric, the RFL solution must first be considered a rubber by satisfying the requirements set forth in Note 4(a) to chapter 40, HTSUSA.

Recently, CBP reviewed independent laboratory test results on resorcinol formaldehyde latex (RFL) solution. Based on the commercial applications for RFL, we presume that manufacturers use essentially the same or similar composition of RFL on high-tenacity synthetic fabric. The laboratory followed the vulcanization and other testing requirements set forth in Note 4(a) to chapter 40, HTSUSA, as described above. After testing and analysis, the laboratory concluded that RFL, without additives, fails to pass the vulcanization and extensibility tests. RFL with additives (a sulfur-based curative system normally used in making RFL fabric) passes the vulcanization test (the first prong) but fails the extensibility test (the second prong). To be considered a "synthetic rubber," RFL must pass both prongs of the test. Because RFL fails to pass the extensibility test set forth in Note 4(a) to chapter 40, HTSUSA, it cannot be considered a "synthetic rubber." Since RFL, with or without additives, is not a "synthetic rubber," fabric treated with RFL cannot be classified in heading 5906, HTSUSA, as a rubberized textile fabric.

Based on the above analysis, we presume that the classification of the fabrics in HQ 087267 under subheading 5906.99.2500, as rubberized textile fabrics, was incorrect. This presumption is rebuttable if it can be demonstrated that the dipping solution meets the recovery, elongation and vulcanization requirements set forth in Note 4(a). This finding is consistent with HQ 089454, dated October 3, 1991, wherein Customs found styrene-

butadiene rubber (SBR) that coated nylon fabric was precluded from consideration as rubber for heading 5906 purposes. *See also* 088273, dated August 8, 1991.

Neither are the treated fabrics classifiable in heading 5903, HTSUSA, which covers "textile fabrics impregnated, coated, covered or laminated with plastics," because the fabrics do not satisfy the requirements of Note 2(a)(1) to Chapter 59. Note 2(a)(1) specifies that "[t]extile fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60)" are not classifiable in heading 5903. Note 2(a)(1) also provides that "no account should be taken of any resulting change of color." In this case, the coating of RFL is not visible to the naked eye and the change of color cannot be taken into account.

Since the subject merchandise is not classifiable *eo nomine* as either rubberized textile fabric (heading 5906) or as plastic coated textile fabric (heading 5903), it falls to be classified at GRI 1 as a woven fabric.

Heading 5407, HTSUSA, provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404." The EN to heading 5407 indicate that the heading covers "a very large variety of dress fabrics, linings, curtain materials, furnishing fabrics, tent fabrics, parachute fabrics, etc." Thus, the provision is not limited by its terms to woven fabrics for any particular application or type of application. Accordingly, synthetic fabric treated with RFL is properly covered under heading 5407, HTSUSA.

The next consideration is whether or not the RFL fabric is "dyed" according to the terms of the HTSUSA. Based on physical examination of the samples under consideration, the styles are tinted orange as a result of the RFL treatment process. Subheading Note 1(g) to Section XI of the HTSUSA defines "dyed woven fabric" as woven fabric which:

> (i) Is dyed a single uniform color other than white (unless the context otherwise requires) or has been treated with a colored finish other than white (unless the context otherwise requires), in the piece; or
>
> (ii) Consists of colored yarn of a single uniform color.

The Dictionary of Fiber & Textile Technology (1990) defines "dyeing" as "[a] process of coloring fibers, yarns, or fabrics with either natural or synthetic dyes." Textile "dyes" are defined as "[s]ubstances that add color to textiles. They are incorporated by chemical reaction, absorption, or dispersion." Accordingly, with respect to dyeing, no particular intent or purpose is required. It is simply a treatment that colors a treated material.

In this situation, according to Note 1(g), the polyeter fabric is treated with RFL solution which alters the fabric's color to a uniform shade of light orange. Because it is colored a single uniform color other than white or treated with a color finish other than white, RFL treated fabric is considered "dyed." This finding is consistent with New York Ruling Letter (NY) 810505, dated May 19, 1995, wherein CBP found glass cord received its color from an RFL treatment. Likewise, in HQ 089454, dated October 3, 1991, CBP ruled that nylon fabric coated with SBR is classified in heading 5407.42.0060, HTSUSA, as dyed woven fabric of filament yarn.

HOLDING:

HQ 087267, dated August 16, 1990, is hereby REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

The three styles of woven polyester fabric treated with RFL are classified in subheading 5407.42.0030, HTSUSA, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides: Dyed: Weighing not more than 170 g/m^2." The general one column rate of duty is 15.1 percent and the textile quota category is 620.

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 Textile Status Report for Absolute Quotas, previously available on the Customs Electronic Bulletin Board (CEBB), is available on the CBP website at www.cbp.gov.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966534
November 6, 2003
CLA–2 RR:CR:TE
CATEGORY: Classification
TARIFF NO.: 5407.42.0030

MS. PAM BROWN
CARGO U.K., INC.
4790 Aviation Parkway
Atlanta, GA 30349

RE: Modification of New York Ruling Letter E87150, dated May 5, 2000; Classification of Resorcinol Formaldehyde Latex Dipped Fabric

DEAR MS. BROWN:

This letter concerns New York Ruling Letter (NY) E87150, issued to you on May 5, 2000, regarding the tariff classification of fabric treated with resorcinol formaldehyde latex (RFL) under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, the Bureau of Customs and Border Protection (CBP) has determined that the classification for two of the eight samples considered was incorrect. For the reasons that follow, this ruling modifies NY E87150.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed modification of NY E87150 was published on October 1, 2003, in the Customs Bulletin, Volume 37, Number 40. As explained in the notice, the period within which to submit comments on this proposal was until October 31, 2003. No comments were received in response to this notice.

FACTS:

The articles under consideration are two samples of fabric, identified as Style T0148 Dipped and Style T0359 Dipped. In NY E87150, CBP described the two samples as follows:

> Style T0148 Dipped is a plain woven fabric composed of 100% filament nylon. It contains 48 warp ends per centimeter and 18 filling picks per centimeter. Weighing 60 g/m^2, this product will be imported in 108 centimeter widths. This fabric has been dipped in resorcinol formaldehyde latex which prepares the fabric to be coated covered or laminated with rubber by promoting the adhesion of the rubber to the fabric. Style T0359 Dipped is a leno woven fabric composed of 100% filament nylon. It contains 32 warp ends per centimeter and 19 filling picks per centimeter. Weighing 70 g/m^2, this product will be imported in 80 centimeter widths. This fabric has been dipped in resorcinol formaldehyde latex which prepares the fabric to be coated covered or laminated with rubber by promoting the adhesion of the rubber to the fabric. The resorcinol formaldehyde latex is considered a rubber coating for the purposes of the Harmonized Tariff Schedules.

In NY E87150, we classified Style T0148 Dipped and Style T0359 Dipped under subheading 5906.99.2500, HTSUSA, which provides for "rubberized textile fabrics, other than those of heading 5902, other, other, of man-made fibers, other."

ISSUE:

What is the proper classification of fabric treated with resorcinol formaldehyde latex under the HTSUSA?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). 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 taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings.

Heading 5906, HTSUSA, provides for rubberized textile fabrics, other than those of heading 5902 (tire cord fabric). Note 4, Chapter 59, HTSUSA, provides in pertinent part:

> For the purposes of heading 5906, the expression "rubberized textile fabrics" means:

(a) Textile fabrics impregnated, coated, covered or laminated with rubber:

i) Weighing not more than 1,500 g/m^2; or

(ii) Weighing more than 1,500 g/m^2 and containing more than 50 percent by weight of textile material;

The term "rubber" is not defined in either the notes to Section XI (Textiles and Textile Articles) or the notes to chapter 59, HTSUSA. However, Note 1 to chapter 40 HTSUSA, states in relevant part that "Except where the context otherwise requires, throughout the tariff schedule the expression 'rubber' means the following products, whether or not vulcanized or hard: . . . natural rubber, . . . synthetic rubber." Note 4(a) to chapter 40 states that in Note 1 to chapter 40, the expression "synthetic rubber" means:

> Unsaturated synthetic substances which can be irreversibly transformed by vulcanization with sulfur into non-themoplastic substances which, at a temperature between 18° and 29° C, will not break on being extended to three times their original length and will return, after being extended twice their original length, within a period of 5 minutes, to a length not greater than 1½ times their original length. For purposes of this test, substances necessary for the cross-linking, such as vulcanizing activators or accelerators, may be added; the presence of substances as provided for by note 5(b)(ii) and (iii) is also permitted. However, the presence of any substances not necessary for the cross-linking, such as extenders, plasticizers and fillers, is not permitted.

Thus, to consider a substance to be a rubber, Note 4(a) sets forth a two-pronged test. First, the substance must be vulcanized (not merely cross-linked). Second, the vulcanized material must satisfy an extension-recovery test as described in Note 4(a). CBP has consistently applied this test to determine whether a substance is a "rubber" for tariff classification purposes. See e.g., HQ 964704, dated April 11, 2001; HQ 963528, dated July 27, 2000; and HQ 956863, dated May 2, 1995.

Resorcinol Formaldehyde Latex (RFL) is a commonly used treatment for rubber to fabric adhesions generally used on high-tenacity synthetic fabric to facilitate adhesion between fabric and rubber by improving the "grab" of rubber to textile. RFL is applied at the fabric mill where the treated fabric is dried and heat set at the same time, producing an orange tint to the fabric. However, a more thorough examination of the physical characteristics of RFL reveals that RFL is not in fact a rubber.

The word "latex" in RFL can have different meanings. The American Heritage Dictionary of the English Language, Fourth Edition (2000) defines "latex" as follows:

1. The colorless or milky sap of certain plants, such as the poinsettia or milkweed, that coagulates on exposure to air.
2. An emulsion of rubber or plastic globules in water, used in paints, adhesives, and various synthetic rubber products.

Concerning RFL, CBP believes that the word "latex" is not intended to signify that natural rubber is a component or ingredient of the RFL solution. Rather, CBP finds that "latex" is a descriptive term signifying that the resorcinol formaldehyde solution is in the form of an emulsion containing some amount of synthetic rubber or plastic products.

In NY E87150, in finding that Style T0148 Dipped and Style T0359 Dipped were "rubberized," we relied on earlier laboratory analyses of RFL that used limited testing procedures. In HQ 087266 and HQ 087267, both dated August 16, 1990, CBP performed laboratory tests on fabric samples treated with RFL without testing the RFL solution by itself prior to the solution being applied to the fabric. The laboratory analyses were made in part by infrared spectrometry, wherein the spectrograph bands or peaks were compared with known reference bands and appeared to indicate the presence of RFL and SBR rubber. However, the mere presence of a styrene-butadiene rubber (SBR) in the RFL treated fabric does not mean that the RFL solution is considered a rubber for tariff classification purposes. For RFL treated fabric to be considered a rubberized textile fabric, the RFL solution must first be considered a rubber by satisfying the requirements set forth in Note 4(a) to chapter 40, HTSUSA.

Recently, CBP reviewed independent laboratory test results on resorcinol formaldehyde latex (RFL) solution. Based on the commercial applications for RFL fabric, we presume that each manufacturer uses essentially the same or similar composition of RFL on high-tenacity synthetic fabric. The laboratory followed the vulcanization and other testing requirements set forth in Note 4(a) to chapter 40, HTSUSA, as described above. After testing and analysis, the laboratory concluded that RFL, without additives, fails to pass the vulcanization and extensibility tests. RFL with additives (a sulfur-based curative system normally used in making RFL fabric) passes the vulcanization test (the first prong) but fails the extensibility test (the second prong). To be considered a "synthetic rubber," RFL must pass both prongs of the test. Because RFL, with or without additives, fails to pass the two-pronged test set forth in Note 4(a) to chapter 40, HTSUSA, it cannot be considered a "synthetic rubber." Since RFL is not a "synthetic rubber," fabric treated with RFL cannot be classified in heading 5906, HTSUSA, as a rubberized textile fabric.

Based on the above analysis, we presume that the classification of Style T0148 Dipped and T0359 Dipped in NY E87150 under subheading 5906.99.2500, as rubberized textile fabrics, was incorrect. This presumption is rebuttable if it can be demonstrated that the RFL dipping solution meets the recovery, elongation and vulcanization requirements set forth in Note 4(a). This finding is consistent with HQ 089454, dated October 3, 1991, wherein Customs found styrene-butadiene rubber (SBR) that coated nylon fabric was precluded from consideration as rubber for heading 5906 purposes. *See also* 088273, dated August 8, 1991.

The RFL dipped fabrics are also not classifiable in heading 5903, HTSUSA, which covers "textile fabrics impregnated, coated, covered or laminated with plastics," because the RFL fabrics do not satisfy the requirements of Note 2(a)(1) to Chapter 59. Note 2(a)(1) specifies that "[t]extile fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60)" are not classifiable in heading 5903. Note 2(a)(1) also provides that "no account should be taken of any resulting change of color." In this case, the coating of RFL is not visible to the naked eye and the change of color cannot be taken into account.

Since the subject merchandise is not classifiable *eo nomine* as either rubberized textile fabric (heading 5906) or as plastic coated textile fabric (heading 5903), it falls to be classified at GRI 1 as a woven fabric.

Heading 5407, HTSUSA, provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404." The EN to heading 5407 indicate that the heading covers "a very large variety of dress fabrics, linings, curtain materials, furnishing fabrics, tent fabrics, parachute fabrics, etc." Thus, the provision is not limited by its terms to woven fabrics for any particular type of application. Accordingly, synthetic fabric treated with RFL is properly covered under heading 5407, HTSUSA.

The next consideration is whether or not the RFL fabric is "dyed" according to the terms of the HTSUSA. While CBP no longer has samples of the styles under consideration[1], we presume that the styles were likely tinted orange as a result of the RFL treatment process. Subheading Note 1(g) to Section XI of the HTSUSA defines "dyed woven fabric" as woven fabric which:

(i) Is dyed a single uniform color other than white (unless the context otherwise requires) or has been treated with a colored finish other than white (unless the context otherwise requires), in the piece; or

(ii) Consists of colored yarn of a single uniform color.

The Dictionary of Fiber & Textile Technology (1990) defines "dyeing" as "[a] process of coloring fibers, yarns, or fabrics with either natural or synthetic dyes." Textile "dyes" are defined as "[s]ubstances that add color to textiles. They are incorporated by chemical reaction, absorption, or dispersion." Accordingly, with respect to dyeing, no particular intent or purpose is required. It is simply a treatment that colors a treated material.

In this situation, according to Note 1(g), the nylon fabric is treated with RFL solution which alters the fabric's color to a uniform shade of light orange. Because it is colored a single uniform color other than white or treated with a color finish other than white, RFL treated fabric is considered "dyed." This finding is consistent with NY 810505, dated May 19, 1995, wherein CBP found glass cord received its color from an RFL treatment. Likewise, in HQ 089454, dated October 3, 1991, CBP ruled that nylon fabric coated with SBR is classified in heading 5407.42.0060, HTSUSA, as dyed woven fabric of filament yarn.

HOLDING:

NY E87150, dated May 5, 2000, is hereby MODIFIED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Styles T0148 Dipped and T0359 Dipped are classified in subheading 5407.42.0030, HTSUSA, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides: Dyed: Weighing not more than 170 g/m^2." The general one column rate of duty is 15.1 percent and the textile quota category is 620.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise

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[1] All samples maintained by CBP at 6 World Trade Center in New York were destroyed in the events of September 11, 2001.

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 Textile Status Report for Absolute Quotas, previously available on the Customs Electronic Bulletin Board (CEBB), is available on the CBP website at www.cbp.gov.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966536
November 6, 2003
CLA–2 RR:CR:TE
CATEGORY: Classification
TARIFF NO.: 5407.42.0030

MS. SUE QUADRINO
DANIEL F. YOUNG, INC.
17 Battery Place
New York, NY 10004–1101

RE: Revocation of New York Ruling Letter D83707, dated October 22, 1998; Classification of Resorcinol Formaldehyde Latex Dipped Fabric

DEAR MS. QUADRINO:

This letter concerns New York Ruling Letter (NY) D83707, dated October 22, 1998, issued to you on behalf of Allied Signal (Kaiping) Industrial Fibers Co., Ltd., China, regarding the tariff classification of fabric treated with resorcinol formaldehyde latex (RFL) under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, the Bureau of Customs and Border Protection (CBP) has determined that the classification for the two samples considered was incorrect. For the reasons that follow, this ruling revokes NY D83707.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY D83707 was published on October 1, 2003, in the Customs Bulletin, Volume 37, Number 40. As explained in the notice, the period within which to submit comments on

this proposal was until October 31, 2003. No comments were received in response to this notice.

FACTS:

The articles under consideration are two samples of fabric, identified as style EP–200 and style NN6–200. In NY D83707, CBP described the two styles as follows:

> Style EP–200 consists of a woven fabric of man-made fiber construction hat has been dipped in a Resorcinol Formaldehyde Latex (a rubber). The material is composed of 67% polyester, 27% Nylon 66 and 6% Resorcinol Formaldehyde Latex +IL–6 (Blocked di-isocyanate), by weight.
>
> Style NN6–200 consists of a woven fabric that has also been dipped in a RFL solution. The material is composed of 94% Nylon 6 and 6% RFL, by weight. Both materials will be will be utilized in conveyor belt reinforcement applications.

In NY D83707, we classified both styles under subheading 5906.99.2500, HTSUSA, which provides for "rubberized textile fabrics, other than those of heading 5902, other, other, of man-made fibers, other."

ISSUE:

What is the proper classification of the fabrics treated with resorcinol formaldehyde latex under the HTSUSA?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). 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 taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings.

Heading 5906, HTSUSA, provides for rubberized textile fabrics, other than those of heading 5902 (tire cord fabric). Note 4, Chapter 59, HTSUSA, provides in pertinent part:

> For the purposes of heading 5906, the expression "rubberized textile fabrics" means:
>
> (a) Textile fabrics impregnated, coated, covered or laminated with rubber:
>
> i) Weighing not more than 1,500 g/m^2; or
>
> (ii) Weighing more than 1,500 g/m^2 and containing more than 50 percent by weight of textile material;

The term "rubber" is not defined in either the notes to Section XI (Textiles and Textile Articles) or the notes to chapter 59, HTSUSA. However, Note 1 to chapter 40 HTSUSA, states in relevant part that "Except where the context otherwise requires, throughout the tariff schedule the expression 'rubber' means the following products, whether or not vulcanized or hard: . . .

natural rubber, . . . synthetic rubber." Note 4(a) to chapter 40 states that in Note 1 to chapter 40, the expression "synthetic rubber" means:

> Unsaturated synthetic substances which can be irreversibly transformed by vulcanization with sulfur into non-themoplastic substances which, at a temperature between 18° and 29° C, will not break on being extended to three times their original length and will return, after being extended twice their original length, within a period of 5 minutes, to a length not greater than 1½ times their original length. For purposes of this test, substances necessary for the cross-linking, such as vulcanizing activators or accelerators, may be added; the presence of substances as provided for by note 5(b)(ii) and (iii) is also permitted. However, the presence of any substances not necessary for the cross-linking, such as extenders, plasticizers and fillers, is not permitted.

Thus, to consider a substance to be a rubber, Note 4(a) sets forth a two-pronged test. First, the substance must be vulcanized (not merely cross-linked). Second, the vulcanized material must satisfy an extension-recovery test as described in Note 4(a). CBP has consistently applied this test to determine whether a substance is a "rubber" for tariff classification purposes. *See e.g.*, HQ 964704, dated April 11, 2001; HQ 963528, dated July 27, 2000; and HQ 956863, dated May 2, 1995.

Resorcinol Formaldehyde Latex (RFL) is a commonly used treatment for rubber to fabric adhesions generally used on high-tenacity synthetic fabric to facilitate adhesion between fabric and rubber by improving the "grab" of rubber to textile. RFL is applied at the fabric mill where the treated fabric is dried and heat set at the same time, producing an orange tint to the fabric. However, a more thorough examination of the physical characteristics of RFL reveals that RFL is not in fact a rubber.

The word "latex" in RFL can have different meanings. The American Heritage Dictionary of the English Language, Fourth Edition (2000) defines "latex" as follows:

1. The colorless or milky sap of certain plants, such as the poinsettia or milkweed, that coagulates on exposure to air.
2. An emulsion of rubber or plastic globules in water, used in paints, adhesives, and various synthetic rubber products.

Concerning RFL, CBP believes that the word "latex" is not intended to signify that natural rubber is a component or ingredient of the RFL solution. Rather, CBP finds that "latex" is a descriptive term signifying that the resorcinol formaldehyde solution is in the form of an emulsion containing some amount of synthetic rubber or plastic products.

In NY D83707, in finding that style EP–200 and style NN6–200 were "rubberized," we relied on earlier laboratory analyses of RFL that used limited testing procedures. In HQ 087266 and HQ 087267, both dated August 16, 1990, CBP performed laboratory tests on fabric samples treated with RFL without testing the RFL solution by itself prior to being applied to the fabric. The laboratory analyses were made in part by infrared spectrometry, wherein the spectrograph bands or peaks were compared with known reference bands and appeared to indicate the presence of RFL and a styrene-butadiene rubber (SBR). However, the mere presence of an SBR in the RFL treated fabric does not mean that the RFL solution is considered a rubber for tariff classification purposes. For RFL treated fabric to be considered a

rubberized textile fabric, the RFL solution must first be considered a rubber by satisfying the requirements set forth in Note 4(a) to chapter 40, HTSUSA.

Recently, CBP reviewed independent laboratory test results on resorcinol formaldehyde latex (RFL) solution. Based on the commercial applications for RFL fabric, we presume that each manufacturer uses essentially the same or similar composition of RFL on high-tenacity synthetic fabric. The laboratory followed the vulcanization and other testing requirements set forth in Note 4(a) to chapter 40, HTSUSA, as described above. After testing and analysis, the laboratory concluded that RFL, without additives, fails to pass the vulcanization and extensibility tests. RFL with additives (a sulfur-based curative system normally used in making RFL fabric) passes the vulcanization test (the first prong) but fails the extensibility test (the second prong). To be considered a "synthetic rubber," RFL must pass both prongs of the test. Because RFL, with or without additives, fails to pass the two-pronged test set forth in Note 4(a) to chapter 40, HTSUSA, it cannot be considered a "synthetic rubber." Since RFL is not a "synthetic rubber," fabric treated with RFL cannot be classified in heading 5906, HTSUSA, as a rubberized textile fabric.

Based on the above analysis, we presume that the classification of the fabrics in NY D83707 under subheading 5906.99.2500, as rubberized textile fabrics, was incorrect. This presumption is rebuttable if it can be demonstrated that the dipping solution meets the recovery, elongation and vulcanization requirements set forth in Note 4(a). This finding is consistent with HQ 089454, dated October 3, 1991, wherein Customs found styrene-butadiene rubber (SBR) that coated nylon fabric was precluded from consideration as rubber for heading 5906 purposes. *See also* 088273, dated August 8, 1991.

The RFL dipped fabrics are also not classifiable in heading 5903, HTSUSA, which covers "textile fabrics impregnated, coated, covered or laminated with plastics," because the fabrics do not satisfy the requirements of Note 2(a)(1) to Chapter 59. Note 2(a)(1) specifies that "[t]extile fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60)" are not classifiable in heading 5903. Note 2(a)(1) also provides that "no account should be taken of any resulting change of color." In this case, the coating of RFL is not visible to the naked eye and the change of color cannot be taken into account.

Since the subject merchandise is not classifiable *eo nomine* as either rubberized textile fabric (heading 5906) or as plastic coated textile fabric (heading 5903), it falls to be classified at GRI 1 as a woven fabric.

Heading 5407, HTSUSA, provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404." The EN to heading 5407 indicate that the heading covers "a very large variety of dress fabrics, linings, curtain materials, furnishing fabrics, tent fabrics, parachute fabrics, etc." Thus, the provision is not limited by its terms to woven fabrics for any particular application or type of application. Accordingly, synthetic fabric treated with RFL is properly covered under heading 5407, HTSUSA.

The next consideration is whether or not the RFL fabric is "dyed" according to the terms of the HTSUSA. While CBP no longer has samples of the

styles under consideration[1], we presume that the styles were likely tinted orange as a result of the RFL treatment process. Subheading Note 1(g) to Section XI of the HTSUSA defines "dyed woven fabric" as woven fabric which:

(i) Is dyed a single uniform color other than white (unless the context otherwise requires) or has been treated with a colored finish other than white (unless the context otherwise requires), in the piece; or

(ii) Consists of colored yarn of a single uniform color.

The Dictionary of Fiber & Textile Technology (1990) defines "dyeing" as "[a] process of coloring fibers, yarns, or fabrics with either natural or synthetic dyes." Textile "dyes" are defined as "[s]ubstances that add color to textiles. They are incorporated by chemical reaction, absorption, or dispersion." Accordingly, with respect to dyeing, no particular intent or purpose is required. It is simply a treatment that colors a treated material.

In this situation, according to Note 1(g), the woven fabrics are treated with RFL solution which alters the fabric's color to a uniform shade of light orange. Because it is colored a single uniform color other than white or treated with a color finish other than white, RFL treated fabric is considered "dyed." This finding is consistent with NY 810505, dated May 19, 1995, wherein CBP found glass cord received its color from an RFL treatment. Likewise, in HQ 089454, dated October 3, 1991, CBP ruled that nylon fabric coated with SBR is classified in heading 5407.42.0060, HTSUSA, as dyed woven fabric of filament yarn.

HOLDING:

NY D83707, dated October 22, 1998, is hereby REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Style EP–200 and style NN6–200 are classified in subheading 5407.42.0030, HTSUSA, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides: Dyed: Weighing not more than 170 g/m^2." The general one column rate of duty is 15.1 percent and the textile quota category is 620.

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 Textile Status Report for Absolute Quotas, previously available on the Customs Electronic Bulletin Board (CEBB), is available on the CBP website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local CBP office prior to importation of this mer-

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[1] All samples maintained by CBP at 6 World Trade Center in New York were destroyed in the events of September 11, 2001.

chandise to determine the current status of any import restraints or requirements.

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

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966535
November 6, 2003
CLA–2 RR:CR:TE
CATEGORY: Classification
TARIFF NO.: 5407.42.0030

MR. SID THALER
S.R. THALER
1355 15th Street, Suite 270A
P.O. Box 1657
Fort Lee, NJ 07024

RE: Revocation of New York Ruling Letter 802177, dated February 2, 1995; Classification of Resorcinol Formaldehyde Latex Dipped Fabric

DEAR MR. THALER:

This letter concerns New York Ruling Letter (NY) 802177, issued to you on February 2, 1995, regarding the tariff classification of fabric treated with resorcinol formaldehyde latex (RFL) under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, the Bureau of Customs and Border Protection (CBP) has determined that the classification for the sample considered was incorrect. For the reasons that follow, this ruling revokes NY 802177.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY 802177 was published on October 1, 2003, in the Customs Bulletin, Volume 37, Number 40. As explained in the notice, the period within which to submit comments on this proposal was until October 31, 2003. No comments were received in response to this notice.

FACTS:

In NY 802177, CBP described the merchandise as follows:

> The instant sample, is of tire cord fabric construction, i.e., it consists of a warp containing numerous strong cords and a weft of fine yarns spaced about 3/4″ apart to hold the warp in position. Tire cord fabric must be of high tenacity yarns. In the instant case, the warp yarns are 100% nylon and the weft yarns 100% cotton. (This works out to be 99% nylon and 1% cotton, by weight, respectively). This material has been dipped in a resorcinol formaldehyde latex (RFL). The New York Cus-

> toms Laboratory tested the material for high tenacity yarns and, although, the warp yarns of the sample sent was [*sic*] not long enough for a complete analysis, based on a modified test, it was the Lab's opinion that the nylon yarns would not pass the test for high tenacity yarns. Tire cord fabric classified under 5902. . . HTS, must be of the high tenacity type.

In NY 802177, we classified the subject merchandise under subheading 5906.99.2500, HTSUSA, which provides for "rubberized textile fabrics, other than those of heading 5902, other, other, of man-made fibers, other."

ISSUE:

What is the proper classification of the woven fabric treated with resorcinol formaldehyde latex under the HTSUSA?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). 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 taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings.

Heading 5906, HTSUSA, provides for rubberized textile fabrics, other than those of heading 5902 (tire cord fabric). Note 4, Chapter 59, HTSUSA, provides in pertinent part:

> For the purposes of heading 5906, the expression "rubberized textile fabrics" means:
>
> (a) Textile fabrics impregnated, coated, covered or laminated with rubber:
>
> i) Weighing not more than 1,500 g/m^2; or
>
> (ii) Weighing more than 1,500 g/m^2 and containing more than 50 percent by weight of textile material;

The term "rubber" is not defined in either the notes to Section XI (Textiles and Textile Articles) or the notes to chapter 59, HTSUSA. However, Note 1 to chapter 40 HTSUSA, states in relevant part that "Except where the context otherwise requires, throughout the tariff schedule the expression 'rubber' means the following products, whether or not vulcanized or hard: . . . natural rubber, . . . synthetic rubber." Note 4(a) to chapter 40 states that in Note 1 to chapter 40, the expression "synthetic rubber" means:

> Unsaturated synthetic substances which can be irreversibly transformed by vulcanization with sulfur into non-themoplastic substances which, at a temperature between 18° and 29° C, will not break on being extended to three times their original length and will return, after being extended twice their original length, within a period of 5 minutes, to a length not greater than 1½ times their original length. For purposes of this test, substances necessary for the cross-linking, such as vulcanizing activators or accelerators, may be added; the presence of substances as provided for by note 5(b)(ii) and (iii) is also permitted. However, the

presence of any substances not necessary for the cross-linking, such as extenders, plasticizers and fillers, is not permitted.

Thus, to consider a substance to be a rubber, Note 4(a) sets forth a two-pronged test. First, the substance must be vulcanized (not merely cross-linked). Second, the vulcanized material must satisfy an extension-recovery test as described in Note 4(a). CBP has consistently applied this test to determine whether a substance is a "rubber" for tariff classification purposes. *See e.g.*, HQ 964704, dated April 11, 2001; HQ 963528, dated July 27, 2000; and HQ 956863, dated May 2, 1995.

Resorcinol Formaldehyde Latex (RFL) is a commonly used treatment for rubber to fabric adhesions generally used on high-tenacity synthetic fabric to facilitate adhesion between fabric and rubber by improving the "grab" of rubber to textile. RFL is applied at the fabric mill where the treated fabric is dried and heat set at the same time, producing an orange tint to the fabric. However, a more thorough examination of the physical characteristics of RFL reveals that RFL is not in fact a rubber.

The word "latex" in RFL can have different meanings. The American Heritage Dictionary of the English Language, Fourth Edition (2000) defines "latex" as follows:

1. The colorless or milky sap of certain plants, such as the poinsettia or milkweed, that coagulates on exposure to air.
2. An emulsion of rubber or plastic globules in water, used in paints, adhesives, and various synthetic rubber products.

Concerning RFL, CBP believes that the word "latex" is not intended to signify that natural rubber is a component or ingredient of the RFL solution. Rather, CBP finds that "latex" is a descriptive term signifying that the resorcinol formaldehyde solution is in the form of an emulsion containing some amount of synthetic rubber or plastic products.

In NY 802177, in finding that style subject fabric was "rubberized," we relied on earlier laboratory analyses of RFL that used limited testing procedures. In HQ 087266 and HQ 087267, both dated August 16, 1990, CBP performed laboratory tests on fabric samples treated with RFL without testing the RFL solution by itself prior to the solution being applied to the fabric. Those laboratory analyses were made in part by infrared spectrometry, wherein the spectrograph bands or peaks were compared with known reference bands and this method appeared to indicate the presence of RFL and a styrene-butadiene rubber (SBR). However, the mere presence of an SBR in the RFL treated fabric does not mean that the RFL solution is considered a rubber for tariff classification purposes. For RFL treated fabric to be considered a rubberized textile fabric, the RFL solution must first be considered a rubber by satisfying the requirements set forth in Note 4(a) to chapter 40, HTSUSA.

Recently, CBP reviewed independent laboratory test results on resorcinol formaldehyde latex (RFL) solution. Based on the commercial applications for RFL fabric, we presume that each manufacturer uses essentially the same or similar composition of RFL on high-tenacity synthetic fabric. The laboratory followed the vulcanization and other testing requirements set forth in Note 4(a) to chapter 40, HTSUSA, as described above. After testing and analysis, the laboratory concluded that RFL, without additives, fails to pass the vulcanization and extensibility tests. RFL with additives (a sulfur-based curative system normally used in making RFL fabric) passes the vulcaniza-

tion test (the first prong) but fails the extensibility test (the second prong). To be considered a "synthetic rubber," RFL must pass both prongs of the test. Because RFL, with or without additives, fails to pass the two-pronged test set forth in Note 4(a) to chapter 40, HTSUSA, it cannot be considered a "synthetic rubber." Since RFL is not a "synthetic rubber," fabric treated with RFL cannot be classified in heading 5906, HTSUSA, as a rubberized textile fabric.

Based on the above analysis, we presume that the classification of the fabric in NY 802177 under subheading 5906.99.2500, as rubberized textile fabrics, was incorrect. This presumption is rebuttable if it can be demonstrated that the RFL dipping solution meets the recovery, elongation and vulcanization requirements set forth in Note 4(a). This finding is consistent with HQ 089454, dated October 3, 1991, wherein Customs found styrene-butadiene rubber (SBR) that coated nylon fabric was precluded from consideration as rubber for heading 5906 purposes. *See also* 088273, dated August 8, 1991.

The dipped RFL fabric is also not classifiable in heading 5903, HTSUSA, which covers "textile fabrics impregnated, coated, covered or laminated with plastics," because the RFL fabric does not satisfy the requirements of Note 2(a)(1) to Chapter 59. Note 2(a)(1) specifies that "[t]extile fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60)" are not classifiable in heading 5903. Note 2(a)(1) also provides that "no account should be taken of any resulting change of color." In this case, the coating of RFL is not visible to the naked eye and the change of color cannot be taken into account.

Since the subject merchandise is not classifiable *eo nomine* as either rubberized textile fabric (heading 5906) or as plastic coated textile fabric (heading 5903), it falls to be classified at GRI 1 as a woven fabric.

Heading 5407, HTSUSA, provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404." The EN to heading 5407 indicate that the heading covers "a very large variety of dress fabrics, linings, curtain materials, furnishing fabrics, tent fabrics, parachute fabrics, etc." Thus, the provision is not limited by its terms to woven fabrics for any particular application or type of application. Accordingly, synthetic fabric treated with RFL is properly covered under heading 5407, HTSUSA.

The next consideration is whether or not the RFL fabric is "dyed" according to the terms of the HTSUSA. While CBP no longer has samples of the styles under consideration[1], we presume that the styles were likely tinted orange as a result of the RFL treatment process. Subheading Note 1(g) to Section XI of the HTSUSA defines "dyed woven fabric" as woven fabric which:

> (i) Is dyed a single uniform color other than white (unless the context otherwise requires) or has been treated with a colored finish other than white (unless the context otherwise requires), in the piece; or
>
> (ii) Consists of colored yarn of a single uniform color.

The Dictionary of Fiber & Textile Technology (1990) defines "dyeing" as "[a] process of coloring fibers, yarns, or fabrics with either natural or syn-

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[1] All samples maintained by CBP at 6 World Trade Center in New York were destroyed in the events of September 11, 2001.

thetic dyes." Textile "dyes" are defined as "[s]ubstances that add color to textiles. They are incorporated by chemical reaction, absorption, or dispersion." Accordingly, with respect to dyeing, no particular intent or purpose is required. It is simply a treatment that colors a treated material.

In this situation, according to Note 1(g), the essentially nylon fabric is treated with RFL solution which alters the fabric's color to a uniform shade of light orange. Because it is colored a single uniform color other than white or treated with a color finish other than white, RFL treated fabric is considered "dyed." This finding is consistent with NY 810505, dated May 19, 1995, wherein CBP found glass cord received its color from an RFL treatment. Likewise, in HQ 089454, dated October 3, 1991, CBP ruled that nylon fabric coated with SBR is classified in heading 5407.42.0060, HTSUSA, as dyed woven fabric of filament yarn.

HOLDING:

NY 802177, dated February 2, 1995, is hereby REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

The subject merchandise is classified in subheading 5407.42.0030, HTSUSA, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides: Dyed: Weighing not more than 170 g/m^2." The general one column rate of duty is 15.1 percent and the textile quota category is 620.

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 Textile Status Report for Absolute Quotas, previously available on the Customs Electronic Bulletin Board (CEBB), is available on the CBP website at www.cbp.gov.

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

MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF LOWER BODY DIGNITY GARMENTS

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

ACTION: Notice of modification of one tariff classification ruling letter and revocation of treatment relating to the classification of lower body dignity garments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) is modifying one ruling letter relating to the tariff classification of lower body dignity garments under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed modification was published on October 1, 2003, in the CUSTOMS BULLETIN, Vol. 37, No. 40. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 1, 2004.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Textiles Branch: (202) 572–8713.

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. Tile 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, a notice proposing to

modify New York Ruling Letter (NY) I88517, dated December 12, 2002 was published in the October 1, 2003 CUSTOMS BULLETIN, Vol. 37, No. 40. No comments were received in response to the notice.

As stated in the proposed notice, the modification will cover any rulings on this merchandise which may exist but have not been specifically identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advise 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 transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved in substantially identical transactions 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 I88517, CBP ruled that a lower body dignity garment of 50% cotton/50% polyester knit with a 80% cotton/20% polyester knit terry cloth lining was classified in subheading 6104.53.2010, HTSUS, the provision for "women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: skirts and divided skirts: Of synthetic fibers: Other, women's" and a nylon or polyester lower body dignity garment was classified in subheading 6204.53.3010, HTSUS, the provision for "women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): skirts and divided skirts: Of synthetic fibers: Other, women's." Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the cited ruling is in error as it pertains to the lower body dignity garments. We have determined that the specialized usage of the lower body dignity garments causes them not to be specifically described as skirts. Rather, they are classified as "other garments" of headings 6114, HTSUS, and 6211, HTSUS, due to their wear before or after bathing with assistance. Thus, the articles are classified in subheading 6114.30.3070, HTSUS, the provision for "other garments, knitted or crocheted: of man-made fibers: other,

other: women's or girls' " and subheading 6211.43.0091, HTSUS, the provision for "track suits, ski-suits and swimwear; other garments: other garments, women's or girls': of man-made fibers, other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY I88517 and revoking or modifying any other ruling not specifically identified, to reflect the proper classification of lower body dignity garments according to the analysis contained in Headquarters Ruling Letter (HQ) 966435. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise.

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

DATED: November 7, 2003

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966435
November 7, 2003
CLA–2 RR:CR:TE 966435 KSH
TARIFF NO.: 6114.30.3070, 6211.43.0091

MS. ROBIN LENART
PERSONAL CARE WEAR
PO Box 15451
Brooksville, FL 34604

RE: Modification of New York Ruling Letter (NY) I88517, dated December 12, 2002; Classification of lower body dignity garments; Heading 6114; Heading 6211

DEAR MS. LENART:

This is in response to your letter, dated April 25, 2003, in which you requested reconsideration of New York Ruling Letter (NY) I88517, dated December 12, 2002, which classified a lower body garment, identified as a Reusable Honor Guard Terry Topper, of knit 50% cotton, 50% polyester fabric with a knit 80% cotton, 20% polyester terry cloth fabric lining in subheading 6104.53.2010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Women's or girls' . . . dresses, skirts and divided skirts . . . , Knitted or crocheted: Skirts and divided skirts: Of synthetic fibers: Other, Women's" and a lower body garment, identified as a Reusable Honor Guard Shower Shield, of woven nylon or polyester fabric that has undergone water resistant treatment and lined with a knit polyester mesh fabric, in subheading 6204.53.3010, HTSUS, which provides for "Women's or

girls' . . . dresses, skirts and divided skirts. . . : Skirts and divided skirts: Of synthetic fibers: Other: Other: Women's."[1]

We have reviewed that ruling and have determined that the classification provided for the lower body dignity garments is incorrect. Therefore, this ruling modifies NY I88517 as it pertains to those garments.

Pursuant to section 625(c), Tariff Act of 1930, as amended by section 623 of Title VI (Customs Modernization) of the North America Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993) notice of the proposed modification of NY I88517 was published on October 1, 2003, in the Customs Bulletin, Vol. 37, No. 40. No comments were received in response to the notice.

FACTS:

The submitted samples consist of a Women's 4-piece Reusable Honor Guard Set consisting of a Shower Shield, Chest Shield, Terry Topper and Terry Chest Shield and a Men's 2-piece Reusable Honor Guard Set consisting of a Terry Topper and Shower Shield. The Shower and Chest Shield are comprised of woven nylon or polyester fabric which has undergone water resistant treatment and are lined with a knit polyester mesh fabric. The garments are worn during bathing or attending to personal care. The Shower Shield is a wrap with hook and loop fasteners at the waist. It features three overlapping panels that allow entry for personal hygiene and removing undergarments. The Chest Shield is an upper body garment designed for women. It covers the front of the torso and features a self-fabric neck and hoop and loop fasteners to attach to the Shower Shield. The Terry Topper and Terry Chest Shield are made of 50% cotton, 50% polyester fabric with a knit 80% cotton, 20% polyester terry cloth fabric lining. They allow for modest removal of undergarments and/or the Shower and Chest Shield. The Terry Topper is a wrap with a partially elasticized waistband and a hook and loop closure that closes right over left. The Terry Chest Shield is an upper body garment for women which only covers the front of the torso. It features a self-fabric neck with hook and loop fasteners which attach to the Terry Topper. The samples will be returned to you per your request.

ISSUE:

Whether the Shower Shield and Terry Topper are properly classified as skirts.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of

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[1] We note that you have not requested reconsideration of the classification of the Reusable Honor Guard upper body dignity garments. Accordingly, they will not be addressed herein.

each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

The competing tariff headings are as follows:

> Heading 6104—Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted
>
> OR
>
> Heading 6114—Other garments, knitted or crocheted
>
> AND
>
> Heading 6204—Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear)
>
> OR
>
> Heading 6211—Track suits, ski suits and swimwear; other garments.

Since Heading 6114 and 6211 are basket provisions, the garments are classified in Headings 6104 and 6204 unless they are excluded from those provisions for some reason.

The Explanatory Notes (EN), the official interpretation of the tariff at the international level, state the following regarding Heading 6114:

> This heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of this Chapter.
>
> The heading includes, *inter alia*:
>
> (1) Aprons, boiler suits (coveralls), smocks and other protective clothing of a kind worn by mechanics, factory workers, surgeons, etc.
>
> * * *
>
> (4) Specialised clothing for airmen, etc. (e.g., airmen's electrically heated clothing).
>
> (5) Special articles of apparel used for certain sports or for dancing or for gymnastics (e.g. fencing clothing, jockeys' silks, ballet skirts, leotards).

We believe that Heading 6114, as evidenced by the exemplars stated above, is meant to cover specially designed or constructed garments. Moreover, the Terry Topper's design features, i.e., its limited coverage, make its limited use clear. While the Terry Topper has the appearance of a skirt, it is obvious that it is only worn when removing undergarments or after bathing. Because of the limited and specialized usage of this merchandise, and the manner of its usage, the Terry Topper is neither commonly nor commercially known as a skirt. Since tariff terms presumably carry the meaning given them in trade and commerce, this merchandise cannot be classified as a skirt. S.G.B. Steel Scaffolding & Shoring Co. v. United States, 82 Cust. Ct. 197, C.D. 4802 (1979).

The applicable EN's to heading 6114, apply *mutatis mutandis* to the articles of heading 6211. Accordingly, while the Shower Shield has the appearance of a skirt, it is only worn during bathing. Because of the limited and specialized usage of this merchandise, and the manner of its usage, the

Shower Shield is neither commonly nor commercially known as a skirt. The Shower Shield cannot be classified as a skirt and is classifiable in heading 6211, HTSUS, as an other garment.

In your request for reconsideration you have asked whether the men's and women's Reusable Honor Guard Sets can be classified as a set in accordance with GRI 3(b). Textile apparel is classified within Section XI of the HTSUS. Note 13 to Section XI states, "Unless the context otherwise requires, textile garments of different headings are to be classified in their own headings even if put up in sets for retail sale." We have construed this note to classify garments including pajama tops and bottoms, suits, and bikinis as sets. Although the Reusable Honor Guard sets are put up for retail sale in a set, the articles are not covered by note 13, because they are both classifiable in the same heading and tariff provision.

You have also requested classification of the Terry Topper and Terry Chest Shield if the predominate weight of the garments is polyester when imported. The classification of the garments is normally based on the fiber content of the fabric of the outer shell.

Section Xl, Note 2(A), HTSUSA, states that "[g]oods classifiable in Chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material." Subheading Note 2(A) to Section XI, HTSUSA, states that "[p]roducts of Chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for classification of a product of chapters 50 to 55 or of heading 5809 consisting of the same textile materials." In accordance with Subheading Note 2(A), the articles would be classified in chief weight of polyester in subheading 6114.30.3070, HTSUS, which provides for "Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Women's or girls'.

The chest shield remains classifiable in accordance with NY I88517.

HOLDING:

NY I88517, dated December 12, 2002, is hereby modified. The Terry Topper is classified in subheading 6114.30.3070, HTSUS, which provides for "Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Women's or girls'. The general column one duty rate is 15 percent ad valorem. The textile category designation is 659. The Shower Shield is properly classified in subheading 6211.43.0091, HTSUS, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers, Other." The general column one duty rate is 16.1 percent ad valorem. The textile category designation is 659.

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 Textile Status Report for Absolute Quotas, available on the CBP website at www. cbp.gov.

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

you should contact the local CBP office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

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

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

PROPOSED REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF MEN'S OR BOYS SUIT-TYPE JACKETS

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter, and revocation of any treatment relating to the classification of men's or boys' suit-type jackets.

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 one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of men's or boys' suit-type jackets. 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 January 2, 2004.

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 one ruling letter relating to the tariff classification of men's or boys' suit-type jackets. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) I80881, dated May 21, 2002 (attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. Any person involved with substantially identical merchandise should advise CBP during this notice period. An importer's failure to advise CBP of substan-

tially 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 I80881, CBP classified two jackets under subheading 6203.31.5010, HTSUS, as jackets for suits described in Note 3(a) to Chapter 62, HTSUS.

As the importer will sell the jackets as separates, we find that the jackets do not satisfy the terms of Note 3(a) to Chapter 62, HTSUS, because that note requires the presence of two garments, one to cover the upper and one to cover the lower part of the body.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY I80881 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 966315 (attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice.

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

DATED: November 7, 2003

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

Attachments

[ATTACHMEMT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY I80881
May 21, 2002
CLA–2–62:RR:NC:WA:355 I80881
CATEGORY: Classification
TARIFF NO.: 6203.31.5010

MS. DANA N. MOBLEY
J.C. PENNEY PURCHASING CORP.
P.O. Box 10001
Dallas, TX 75301

RE: The tariff classification of men's suit-type jackets from Guatemala

DEAR MS. MOBLEY:

In your letter dated April 19, 2002, you requested a classification ruling.

You submitted samples of two styles of jackets which will be returned as you have requested. Both jackets are made of woven worsted wool fabric

whose yarn has an average fiber diameter of 18.5 microns; both have linings made of 100 percent woven acetate fabric. Style 552–1234 features a collar with a lapels, a three button frontal opening, two pockets with flaps below the waist, three interior pockets, a hemmed bottom, three button sleeves, and a chest pocket. It is made of six panels, two front, two side and two back with a center seam down the back of the jacket. Style 552–5678 features a collar with a lapels, a three button frontal opening, two pockets with flaps below the waist, two interior pockets, a hemmed bottom, four button sleeves, and a chest pocket. It is made of six panels, two front, two side and two back with a center seam down the back of the jacket.

The applicable subheading for styles 552–1234 and 552–5678 will be 6203.31.5010, Harmonized Tariff Schedule of the United States (HTS), which provides for men's or boys' suit-type jackets and blazers, of wool or fine animal hair, of worsted wool fabric, made of wool yarn having an average fiber diameter of 18.5 microns or less, for suits described in Note 3(a). The duty rate will be 18.4 percent ad valorem.

Styles 552–1234 and 552–5678 fall within textile category designation 443. Based upon international textile trade agreements products of Guatemala are subject to quota and the requirement of a visa.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Camille R. Ferraro at 646–733–3046.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966315
CLA–2: RR:CR:TE 966315 RH
CATEGORY: Classification
TARIFF NO.: 6203.31.5020

MS. DANA N. MOBLEY
J.C. PENNEY PURCHASING CORPORATION
P.O. Box 10001
Dallas, TX 75301

RE: Reconsideration of NY I80881; Men's or Boy's Suit-type Jackets; Subheading 6203.31.5020, HTSUS; Separates; Note 3(a) to Chapter 62, HTSUS

DEAR MS. MOBLEY:

On May 21, 2002, Customs (now Customs & Border Protection (CBP)) issued New York Ruling Letter (NY) I80881 to your company concerning the classification of men's suit-type jackets from Guatemala. In that ruling, CBP classified the garments under subheading 6203.31.5010 of the Harmonized Tariff Schedule of the United States (HTSUS), as suit-type jackets and blazers for suits described in Note 3(a) to Chapter 62, HTSUS. Merchandise liquidated under that tariff provision is dutiable at the general column one rate at 18.4 percent *ad valorem* and is subject to textile restraint category 443.

For the reasons set forth below, we now find that the jackets are properly classified under subheading 6203.31.5020, HTSUS, as other suit-type jackets and blazers. Merchandise liquidated under that tariff provision is dutiable at the same rate stated above, but is subject to textile restraint category 433.

FACTS:

A description of the merchandise at issue in NY I80881 reads as follows:

> Both jackets are made of woven worsted wool fabric whose yarn has an average fiber diameter of 18.5 microns; both have linings made of 100 percent woven acetate fabric. Style 552–1234 features a collar with lapels, a three button frontal opening, two pockets with flaps below the waist, three interior pockets, a hemmed bottom, three button sleeves, and a chest pocket. It is made of six panels, two front, two side and two back with a center seam down the back of the jacket. Style 552–5678 features a collar with lapels, a three button frontal opening, two pockets with flaps below the waist, two interior pockets, a hemmed bottom, four button sleeves, and a chest pocket. It is made of six panels, two front, two side and two back with a center seam down the back of the jacket.

ISSUE:

Whether the instant garments are classifiable under subheading 6203.31.5010, HTSUS, as men's or boys' suit-type jackets for suits described in Note 3(a) to Chapter 62, HTSUS, or as other suit-type jackets under subheading 6203.31.5020, HTSUS?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA 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.

Heading 6203, HTSUS, provides for "Men's or boy's suits, ensembles, suit-type jackets, blazers, trousers, bib and breeches and shorts (other than swimwear)." The term "suit" is defined by Note 3(a) to Chapter 62, HTSUS, as follows:

For the purposes of headings 6203 and 6204:

> (a) The term "suit" means a set of garments composed of two or three pieces made up, in respect of their outer surface, in identical fabric and comprising:
>
> —one suit coat or jacket the outer shell of which, exclusive of sleeves, consists of four or more panels, designed to cover the upper part of the body, possibly with a tailored waistcoat in addition whose front is made from the same fabric as the outer surface of the other components of the set and whose back is made from the same fabric as the lining of the suit coat or jacket; and
>
> —one garment designed to cover the lower part of the body and consisting of trousers, breeches or shorts (other than swimwear), a skirt or a divided skirt, having neither braces nor bibs.
>
> All of the components of a "suit" must be of the same fabric construction, color and composition; they must also be of the same style and of corresponding or compatible size. However, these components may have piping (a strip of fabric sewn into the seam) in a different fabric.
>
> If several separate components to cover the lower part of the body area [are] presented together (for example, two pairs of trousers or trousers and shorts, or a skirt or divided skirt and trousers), the constituent lower part shall be one pair of trousers, or, in the case of women's or girls' suits, the skirt or divided skirt, the other garments being considered separately.

* * *

In the instant case, J.C. Penney's advised CBP that the jackets at issue are imported and sold as separates. Accordingly, for statistical purposes CBP finds that the suit-type jackets are not "For suits described in Note 3(a)" and are classified under subheading 6203.31.5020, HTSUS.

HOLDING:

NY I80881 is REVOKED. The jackets are classified under subheading 6203.31.5020, HTSUS, which provides for Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Suit-type jackets and blazers: Of wool or fine animal hair: Other." They are dutiable at the general column one rate at 18.4 percent *ad valorem* and the textile category is 433.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes,

to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of CBP, which is available for inspection at your local CBP office.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CHILDREN'S ANIMAL BLANKETS

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

ACTION: Notice of proposed revocation of one tariff classification ruling letter and revocation of treatment relating to the classification of children's animal blankets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs & Border Protection (CBP) intends to revoke a ruling letter relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a child's animal blanket. 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 January 2, 2004.

ADDRESS: Written comments are to be addressed to 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 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: Beth Safeer, Textiles Branch: (202) 572–8825.

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 revoke one ruling relating to the tariff classification of children's animal blankets. Although in this notice CBP is specifically referring to the revocation of NY F89046, dated July 19, 2000 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases 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.*, a 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 substan-

tially 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 F89046, CBP classified a "Blanket Buddy" from China under subheading 6307.90.9989 HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other." Based on our analysis of the scope of the terms of headings 9503 and 6307, the Legal Notes, and the Explanatory Notes, we find that children's animal blankets of the type subject to this notice are more accurately described as toys than as other made up textile articles and should be classified in subheading 9503.90.0080, HTSUSA, which provides for "Other toys; reduced-size models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other." Note (1)(t) to Section XI, HTSUSA, specifically precludes toys from classification in that section.

Pursuant to 19 U.S.C. 1625 (c)(1), CBP intends to revoke NY F89046, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 966809 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise.

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

DATED: November 12, 2003

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY F89046
July 19, 2000
CLA–2–63:RR:NC:TA:351 F89046
CATEGORY: Classification
TARIFF NO.: 6307.90.9989

MS. JILL BURNS
MSAS GLOBAL LOGISTICS, INC.
10205 N.W. 19th St.
Miami, FL 33172

RE: The tariff classification of a "Blanket Buddy" from China.

DEAR MS. BURNS:

In your letter dated June 27, 2000, on behalf of Gerber Childrenswear, Inc., Greenville, South Carolina, you requested a tariff classification ruling. The sample is being returned as requested.

The sample submitted is a child's "Blanket Buddy," item number 17069. It is constructed of a stuffed animal head, ears, and arms attached onto a knit pile fabric lined with polyester satin woven fabric. The stuffed head will be a hippopotamus, dog, bunny or lamb.

The applicable subheading for the "Blanket Buddy" will be 6307.90.9989, 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.

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 212–637–7086.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966809
CLA–2 RR:CR:TE 966809 BAS
CATEGORY: Classification
TARIFF NO.: 9503.90.0080

JILL BURNS
MSAS GLOBAL LOGISTICS, INC.
10205 N.W. 19th Street
Miami, Florida 33172

RE: Revocation of NY F89046, dated July 19, 2000; Classification of the "Blanket Buddy" from China

DEAR MS. BURNS:

This is in reference to New York Ruling Letter (NY) F89046, issued to you on July 19, 2000. In NY F89046, a "Blanket Buddy" from China was classified under subheading 6307.90.9989, HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other."

Upon review of the ruling, the Bureau of Customs and Border Protection (CBP) has determined that the merchandise was erroneously classified. This ruling letter revokes NY F89046 and sets forth the correct classification determination.

FACTS:

The merchandise under consideration is a child's "Blanket Buddy," item number 17069. It is constructed of a stuffed animal head, ears, and arms attached onto a knit pile fabric lined with polyester satin woven fabric. The stuffed head is either a hippopotamus, dog, bunny or lamb.

ISSUE:

Is the subject "Blanket Buddy" classifiable under heading 6307, HTSUSA, which covers other made up articles or heading 9503, HTSUSA, which covers toys?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (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 headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

HEADING 9503, HTSUSA:

Heading 9503, HTSUSA, covers "Other toys; reduced-size ("scale") models and similar recreation models, working or not; puzzles of all kinds; parts and accessories thereof." The Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. The EN to heading 9503, HTSUSA, state that the heading covers toys intended essentially for the amusement of persons. These include toys representing animals or non-human creatures. The "Blanket Buddy" is a toy which is a representation of an animal or non-human creature and is intended for the

amusement of children. Depending on the actual toy, we have consistently classified "blankie" type toys in different subheadings within heading 9503. NY H85796, December 26, 2001; NY H83023, dated July 23, 2001; NY G84760, dated December 20, 2000; NY F81811, February 1, 2000; and NY F88296, dated June 14, 2000.

In general, toys that depict full-bodied animals have been classified either in subheading 9503. 41, HTSUSA or subheading 9503.49, HTSUSA. NY G84760, dated December 20, 2000; NY F91911, dated February 1, 2000; NY F88296, dated June 14, 2000. Because the animal depicted on the "Blanket Buddy" is not a "full bodied" representation of an animal, it is not properly classifiable in subheading 9503.90.0080, HTUSA, as "Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other." This is consistent with other rulings in which we have classified other than full bodied animal representations attached to children's blankets, in subheading 9503.90.0080, HTSUSA. NY H85796, dated December 26, 2001; NY H83023, dated July 23, 2001

HEADING 6307, HTSUSA

Heading 6307, HTSUSA, is the provision for other made up articles. The EN to Heading 6307 state that the heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature. Since the "Blanket Buddy" is described more specifically, by heading 9503, HTSUSA, the basket provision, would not be the appropriate heading in which the subject merchandise should be classified.

Note (1)(t) to Section XI, furthermore, states that the section does not cover articles of Chapter 95, for example, toys. Having concluded that the "Blanket Buddy" is a toy, it is therefore precluded from classification in Section XI, HTSUSA.

HOLDING:

NY F89046, dated July 19, 2000, is hereby revoked.

The "Blanket Buddy" is classified in subheading 9503.90.0080, HTSUSA, which provides for "Other toys; reduced-size models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof: Other: Other." The general column one rate of duty is free.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF TITANIUM BILLETS

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

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of titanium billets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling relating to the tariff classification of titanium billets, and revoking any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed revocation was published on October 1, 2003, in the Customs Bulletin.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 1, 2004.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 572–8779.

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), 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 based on the premise 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 rights and responsibilities 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, 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 declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to Customs obligations, a notice was published on October 1, 2003, in the Customs Bulletin, Volume 37, Number 40, proposing to revoke NY A84786, dated July 12, 1996, which classified titanium billets as unwrought titanium, in subheading 8108.10.50 (now 20.00), Harmonized Tariff Schedule of the United States (HTSUS). One comment was received in response to this notice, opposing the proposed revocation.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling

or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY A84786 to reflect the proper classification of forged titanium billets in subheading 8108.90.60, HTSUS, as other titanium and articles thereof, in accordance with the analysis in HQ 966570, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

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

DATED: November 7, 2003

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966570
November 7, 2003
CLA–2 RR:CR:GC 966570 JAS
CATEGORY: Classification
TARIFF NO.: 8108.90.60

PAUL ABERLY
THE ABERLY GROUP
7934 North 54th Place
Paradise Valley, AZ 85253

RE: NY A84786 Revoked; Forged Titanium Billets

DEAR MR. ABERLY:

In NY A84786, which the Director of Customs National Commodity Specialist Division, New York, issued to you on July 12, 1996, certain titanium billets from Russia were held to be classifiable as unwrought titanium, in subheading 8108.10.50, Harmonized Tariff Schedule of the United States (HTSUS).

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY A84786 was published on October 1, 2003, in the Customs Bulletin, Volume 37, Number 40. One comment was received in response to that notice, opposing the proposed revocation. We will briefly discuss that comment, and our response, in the body of this ruling.

FACTS:

The merchandise in NY A84786 was described as being imported in billet form and thereafter to be melted down for use in the manufacture of recreational equipment. The chemical analysis of the product was stated to be 90 percent titanium, 6 percent aluminum and 4 percent vanadium, all by weight. The product was not further described.

The HTSUS provisions under consideration are as follows:

8108	Titanium and articles thereof, including waste and scrap:
8108.10.50 (now **20.00**)	Unwrought titanium
8108.90	Other:
8108.90.60	Other

ISSUE:

Whether forged titanium billets are unwrought products for tariff purposes.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and pro-

vided the headings or notes do not require otherwise, according to GRIs 2 through 6.

According to Section XV, Additional U.S. Note 1, HTSUS, the term "unwrought" includes billets, among other similar manufactured primary forms of metal, but does not cover rolled or forged products, among others. Technical sources on titanium production we have consulted indicate that titanium ore is first chlorinated, then reacted with either magnesium or sodium to yield metallic titanium sponge. The sponge is crushed and pressed, then melted in a vacuum arc furnace. The melted sponge solidifies under the vacuum conditions of the furnace to form a solid titanium ingot which is then forged into either slabs or billets. Additionally, the term **billet** is defined as a semifinished section that is hot rolled from a metal ingot . . . , (2) a solid semifinished round or square product that has been hot worked by forging, rolling, or extrusion. Metals Handbook, Desk Edition, 2nd (1998), published by the American Society for Metals. As it appears that the titanium billets at issue here are produced by hot rolling or forging, they are not unwrought products for tariff purposes, and cannot be classified as unwrought titanium, in subheading 8108.20.00, HTSUS. See NY I89977, dated January 24, 2003.

The comment received in response to the October 1, 2003, notice contained two arguments in support of the subheading 8108.10.50 (now 20.00), HTSUS, classification. First, billets are clearly enumerated among the examples of "manufactured primary forms," as that expression appears in Section XV, Additional U.S. Note 1, HTSUS, defining the term "unwrought," such that the exclusionary language "forged, drawn, or extruded products, tubular products or cast or sintered forms" must be interpreted as a reference only to products that have been forged into the rough shape of a final product. The titanium billets are not such products. Second, the classification expressed in NY A84786 is consistent with existing Customs rulings on similar products produced by a vertical continuous casting process.

The fact that billets are listed in Additional U.S. Note 1 as one example of a manufactured primary form, does not establish them as unwrought products for tariff purposes. The phrase "manufactured primary form" in Note 1 must be examined *in pari materia* with the remaining text in that note so as to give full meaning to Note 1. The text of Note 1 expressly states the term "unwrought" does not cover forged products. This exclusion is unequivocal. Thus, titanium billets produced by forging cannot be considered "unwrought" for purposes of Additional U.S. Note 1, HTSUS. The two rulings cited in support of the subheading 8108.10.50 (now 20.00), HTSUS, classification, HQ 955629, dated April 21, 1994, and NY G82889, dated November 6, 2000, concerned so-called magnesium T-bars and aluminum billets, respectively, both produced by the continuous casting process. These rulings are distinguishable on the facts from the merchandise at issue here. The T-bars in HQ 955629 were subsequently processed by what was considered a simple trimming operation similar to one employed in removing gates, risers and fins. Additional U.S. Note 1, HTSUS, specifically states that simple trimming operations are not sufficient to disqualify a cast article from being considered unwrought, if it otherwise qualifies. Similarly, as NY G82889 is silent on whether the aluminum billets were further machined or processed otherwise than by simple trimming, scalping or descaling, the finding in that ruling is correct on its face.

HOLDING:

Under the authority of GRI 1, the titanium billets produced by forging are provided for in heading 8108. They are classifiable as other titanium and articles thereof, in subheading 8108.90.60, HTSUS.

EFFECT ON OTHER RULINGS:

NY A84786, dated July 12, 1996, is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

ERRATA

mushrooms . . . do not meet that FDA standard, they are outside the scope of the antidumping duty order." *Id*.

After a preliminary ruling and considering comments thereon, the ITA issued its final determination that

> the "marinated or acidified" mushrooms produced, exported or imported by [the plaintiffs] are within the scope of the antidumping duty order on [certain preserved mushrooms] from the PRC based on their acetic acid content level.

Plaintiffs' Appendix, tab 13, second page. It is based on the petitioners' use of HTSUS subheading 2001.90.39 to define the products they intended to exclude from this matter and the agency's "appropriat[ion of] the phrase 'prepared or preserved with vinegar or acetic acid' directly from the HTS heading". *Id*., seventh page. The ITA read that phrase as having been interpreted by Customs to require a minimum 0.5 percent acetic-acid level. *See id*., ninth page. As plaintiffs' product, admittedly, does not contain that much, the agency determined it to be within the ambit of its anti-dumping-duty order. *See id*., second and fifth pages.

II

Jurisdiction over this case is pursuant to 28 U.S.C. §§ 1581(c) and 2631(c). The standard of review is whether the determination is unsupported by substantial evidence on the record or otherwise not in accordance with law. *See* 19 U.S.C. §§ 1516a(a)(2)(B)(vi), 1516a(b)(1)(B)(i). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938). It must also be noted that, on questions of scope, the ITA has "broad authority to interpret its own antidumping duty orders". *INA Walzlager Schaeffler KG v. United States*, 108 F.3d 301, 307 (Fed.Cir. 1997). Such determinations are made pursuant to 19 C.F.R. § 351.225, which states that, in

> considering whether a particular product is included within the scope of an order . . . , the Secretary will take into account the following:
>
> (1) The descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the Commission.
>
> (2) When the above criteria are not dispositive, the Secretary will further consider:
>
> (i) The physical characteristics of the product;
> (ii) The expectations of the ultimate purchasers;
> (iii) The ultimate use of the product;

(iv) The channels of trade in which the product is sold; and
(v) The manner in which the product is advertised and displayed.

19 C.F.R. § 351.225(k) (2000).

A

None of the parties suggests resort to these enumerated criteria.[5] Rather, each side argues for a different interpretation of the petition language and the agency determination(s). *See, e.g.*, Plaintiffs' Brief, pp. 12–13; Defendant's Memorandum, p. 31; Response Brief of Defendant-Intervenor, pp. 15–16.

The plaintiffs reiterate that the "petitioners intended the dumping order to cover only products meeting the 'standard of identity' for 'canned mushrooms' ".[6] They further argue that neither the plain language of the order nor the record support use of the 0.5 percent acetic-acid-level test to determine whether their product is within the scope of the order.

The defendant maintains that the order

> reflected the petitioners' intent to exclude from the scope only such mushrooms that are "prepared and preserved by means of vinegar or acetic acid," even though it omitted the reference to HTS subheading 2001.90.39.

Defendant's Memorandum, pp. 30–31. The intervenor-defendant also contends that the exclusionary language should be interpreted in conformity with the HTS subheading. *See* Response Brief of Defendant-Intervenor, pp. 15–16.

B

The merchandise specifically excluded from this matter was described in the ITA's notices of initiation of investigation and of the preliminary, final, and amended final determinations with identical language, to wit:

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[5] Indeed, as noted by the ITA in its preliminary ruling, the FDA standard of identity

> is not controlling of the scope of the order . . . , which contains intentionally broad text so as to include all preserved mushrooms, with some very specific exceptions.

Plaintiffs' Appendix, tab 12, numbered pages 8-9.

[6] Plaintiffs' Brief, pp. 16-17. However, as they explained in a letter supplementing the petition, the petitioners were

> concerned about circumvention by the placing of preserved mushrooms in containers other than cans, such as jars or tubs, and therefore . . . have defined the scope as "certain preserved mushrooms."

Plaintiffs' Appendix, tab 2, numbered page 5.

Change in Fees to be Paid Upon the Filing of an Appeal

Please be advised that at its September 2003 session, the Judicial Conference of the United States approved changes to the miscellaneous fee schedule for the courts of appeals, the district courts, the Court of Federal Claims, the bankruptcy courts, and the Judicial Panel on Multidistrict Litigation, promulgated under Title 28 U.S.C. §§ 1913, 1914, 1926, 1930 and 1932, respectively.

Therefore, pursuant to this change, Title 28, U.S.C. § 2633(a), and USCIT Rule 80(g), effective November 1, 2003, the cost for the filing of an appeal in the U.S. Court of International Trade to the U.S. Court of Appeals for the Federal Circuit will be increased from $105 to $255.

October 21, 2003

LEO M. GORDON,
Clerk of the Court.

Notice of Amendments to the Rules

On September 30, 2003, the Court approved certain amendments to the Rules of the United States Court of International Trade that will become effective on January 1, 2004. The Rules affected by these changes are: **USCIT Rules Judges Page**; **USCIT Rules (amended)** 3, 3.1, 4, 4.1, 5, 7, 16, 22, 26, 27, 36, 40, 54, 58, 63, 67.1, 68, 70, 71, 72, 73, 74, 77; 78, 79, 81, 82, 82.1 and 89; **USCIT Forms (amended)** 1, 1B, 2, 3, 4, 9, 10, 15, 16, 17, 18 and 19; **Specific Instructions (amended)** for Forms 15, 16, 17 and 18; **Appendix on Access to BPI (amended)**; **Appendix of Forms (amended)**; **USCIT Rules (new)** 16.1, 26.1, 54.1, 73.1, 73.2, 73.3, 86.1 and 86.2; **USCIT Forms (new)** 16–1, 16–2, 16–3, 16–4, 16–5, 20, M–1 and M–2; **USCIT Specific Instructions (new)** for Form 19; **USCIT Guidelines for Court-Annexed Mediation (new)**; and **Standard Chambers Procedures (new)**.

Language deleted from each rule appears in brackets with strikeovers. New language is indicated by redline type.

A copy of the amendments may be obtained from the Court's web site: **www.cit.uscourts.gov**

October 31, 2003

LEO M. GORDON,
Clerk of the Court.