U.S. Customs and Border Protection

CBP Decisions

(CBP Dec. 07–86)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR SEPTEMBER, 2007

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): September 3, 2007

European Union euro:

September 1, 2007	1.364100
September 2, 2007	1.364100
September 3, 2007	1.364100
September 4, 2007	1.360600
September 5, 2007	1.366900
September 6, 2007	1.369700
September 7, 2007	1.377200
September 8, 2007	1.377200
September 9, 2007	1.377200
September 10, 2007	1.379400
September 11, 2007	1.383700
September 12, 2007	1.390400
September 13, 2007	1.388500
September 14, 2007	1.384800
September 15, 2007	1.384800
September 16, 2007	1.384800
September 17, 2007	1.386000
September 18, 2007	1.386900
September 19, 2007	1.395000
September 20, 2007	1.409200
September 21, 2007	1.407600
September 22, 2007	1.407600
September 23, 2007	1.407600
September 24, 2007	1.408600
September 25, 2007	1.412800
September 26, 2007	1.412600

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for September 2007 (continued):

European Union euro: (continued):

September 27, 2007	1.413800
September 28, 2007	1.421900
September 29, 2007	1.421900
September 30, 2007	1.421900

South Korea won:

September 1, 2007	0.001066
September 2, 2007	0.001066
September 3, 2007	0.001066
September 4, 2007	0.001065
September 5, 2007	0.001066
September 6, 2007	0.001065
September 7, 2007	0.001066
September 8, 2007	0.001066
September 9, 2007	0.001066
September 10, 2007	0.001064
September 11, 2007	0.001068
September 12, 2007	0.001073
September 13, 2007	0.001078
September 14, 2007	0.001078
September 15, 2007	0.001078
September 16, 2007	0.001078
September 17, 2007	0.001076
September 18, 2007	0.001076
September 19, 2007	0.001081
September 20, 2007	0.001088
September 21, 2007	0.001086
September 22, 2007	0.001086
September 23, 2007	0.001086
September 24, 2007	0.001088
September 25, 2007	0.001086
September 26, 2007	0.001086
September 27, 2007	0.001087
September 28, 2007	0.001095
September 29, 2007	0.001095
September 30, 2007	0.001095

Taiwan N.T. dollar:

September 1, 2007	0.030285
September 2, 2007	0.030285
September 3, 2007	0.030285
September 4, 2007	0.030276
September 5, 2007	0.030257
September 6, 2007	0.030257
September 7, 2007	0.030266
September 8, 2007	0.030266
September 9, 2007	0.030266
September 10, 2007	0.030248
September 11, 2007	0.030230
September 12, 2007	0.030248

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for September 2007 (continued):

Taiwan N.T. dollar: (continued):

September 13, 2007	0.030230
September 14, 2007	0.030230
September 15, 2007	0.030230
September 16, 2007	0.030230
September 17, 2007	0.030230
September 18, 2007	0.030211
September 19, 2007	0.030230
September 20, 2007	0.030248
September 21, 2007	0.030349
September 22, 2007	0.030349
September 23, 2007	0.030349
September 24, 2007	0.030377
September 25, 2007	0.030349
September 26, 2007	0.030367
September 27, 2007	0.030377
September 28, 2007	0.030609
September 29, 2007	0.030609
September 30, 2007	0.030609

Dated: October 1, 2007

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.

(CBP Dec. 07–85)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR SEPTEMBER, 2007

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in CBP Decision 07-74 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): September 3, 2007

Australia dollar

September 1, 2007	0.815700
September 2, 2007	0.815700
September 3, 2007	0.815700

FOREIGN CURRENCIES—Variances from quarterly rates for September 2007 (continued):

Canada dollar

September 20, 2007	0.998901
September 21, 2007	0.999201
September 22, 2007	0.999201
September 23, 2007	0.999201
September 24, 2007	0.998901
September 25, 2007	0.999500
September 28, 2007	1.004117
September 29, 2007	1.004117
September 30, 2007	1.004117

Japan yen

September 1, 2007	0.008633
September 2, 2007	0.008633
September 3, 2007	0.008633
September 5, 2007	0.008684
September 6, 2007	0.008671
September 7, 2007	0.008805
September 8, 2007	0.008805
September 9, 2007	0.008805
September 10, 2007	0.008816
September 11, 2007	0.008774
September 12, 2007	0.008754
September 13, 2007	0.008668
September 14, 2007	0.008672
September 15, 2007	0.008672
September 16, 2007	0.008672
September 17, 2007	0.008701
September 18, 2007	0.008639
September 20, 2007	0.008758
September 21, 2007	0.008651
September 22, 2007	0.008651
September 23, 2007	0.008651
September 24, 2007	0.008702
September 25, 2007	0.008735
September 26, 2007	0.008646
September 27, 2007	0.008639
September 28, 2007	0.008698
September 29, 2007	0.008698
September 30, 2007	0.008698

New Zealand dollar

September 1, 2007	0.702500
September 2, 2007	0.702500
September 3, 2007	0.702500
September 4, 2007	0.698700
September 5, 2007	0.690000
September 6, 2007	0.691700
September 7, 2007	0.688900
September 8, 2007	0.688900
September 9, 2007	0.688900
September 10, 2007	0.693800

FOREIGN CURRENCIES—Variances from quarterly rates for September 2007 (continued):

New Zealand dollar (continued):

September 11, 2007	0.701600
September 12, 2007	0.714000
September 13, 2007	0.717100
September 14, 2007	0.712500
September 15, 2007	0.712500
September 16, 2007	0.712500
September 17, 2007	0.704400
September 18, 2007	0.709900
September 19, 2007	0.732800
September 20, 2007	0.742700
September 21, 2007	0.741500
September 22, 2007	0.741500
September 23, 2007	0.741500
September 25, 2007	0.739200

Norway krone

September 24, 2007	0.181284
September 25, 2007	0.181472
September 26, 2007	0.181666
September 27, 2007	0.183043
September 28, 2007	0.184860
September 29, 2007	0.184860
September 30, 2007	0.184860

Dated: October 1, 2007

MARGARET T. BLOM,
Acting Chief,
Customs Information Exchange.

General Notice

USCBP–2007–0098

HAWAIIAN COASTWISE CRUISES

AGENCY: Customs and Border Protection; Department of Homeland Security

ACTION: Proposed interpretation; solicitation of comments.

SUMMARY: This document proposes new criteria to be used by Customs and Border Protection ("CBP") to determine whether non-coastwise-qualified vessels are in violation of the Passenger Vessel Services Act (PVSA) when engaging in cruise itineraries in which passengers board at a U.S. port, the vessel calls at several Hawaiian ports, and then the vessel proceeds to a foreign port or ports for a brief period, before ultimately returning to the original U.S. port of embarkation where the passengers disembark to complete their cruise. CBP believes these itineraries are contrary to the PVSA because it appears that the primary objective of the foreign stop is evasion of the PVSA.

DATE: Comments must be received on or before December 21, 2007.

FOR FURTHER INFORMATION CONTACT: Glen E. Vereb, Cargo Security, Carriers & Immigration Branch, Office of International Trade, (202) 572–8730.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- Mail: Border Security Regulations Branch, Office of International Trade, Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229

SUPPLEMENTAL INFORMATION:

I. PUBLIC PARTICIPATION

Interested persons are invited to participate in this proposed interpretation by submitting written data, views, or arguments on all aspects of the proposed interpretation. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed interpretation. Comments that will provide the most assistance to CBP in developing these procedures will reference a specific portion of the proposed interpretation, explain the reason for any recom-

mended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and docket number for this proposed interpretation. All comments received will be posted without change to http://www.regulations.gov, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to http://www.regulations.gov. Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted documents should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

II. BACKGROUND

The maritime cabotage law governing the transportation of passengers was first established by section 8 of the Passenger Vessel Services Act of June 19, 1886 (the "PVSA"), 24 Stat. 81; as amended by section 2 of the Act of February 17, 1898, 30 Stat. 248, formerly codified at 46 U.S.C. App. 289 (now codified at 46 U.S.C. 55103). That statute provided that no foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of $200 (now $300, as promulgated in T.D. 03–11 pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note) for each passenger so transported and landed.

The intent of the maritime cabotage laws, including the PVSA, was to provide a "legal structure that guarantees a coastwise monopoly to American shipping and thereby promotes development of the American merchant marine." Autolog Corp. v. Regan, 731 F.2d 25, 28 (DC Cir. 1984); see also The Granada, 35 F.Supp. 892, 893, 1940 AMC 1601 (DC Pa 1940) (stating that the legislative aim of section 289 [now 55102] was the creation of a practical monopoly of coastwise and domestic shipping business for United States ships). In other words, the PVSA was enacted to advance the United States merchant marine and fleet by restricting the use of foreign-owned/flagged passenger vessels in United States territorial waters.

Passenger vessel transportation between United States ports has historically been viewed to be part of the coastwise trade after the enactment of the PVSA. This view is premised on the concepts of continuity of the voyage and whether its intended purpose or objective was coastwise transportation. In other words, the PVSA was held to be violated if the coastwise movement was continuous or if the purpose of the trip was a coastwise voyage. (See 18 O.A.G. 445, September 4, 1886; 28 O.A.G. 204, February 16, 1910; 29 O.A.G. 318,

February 12, 1912; 30 O.A.G. 44, February 1, 1913; 34 O.A.G. 340, December 24, 1924; and 36 O.A.G. 352, August 13, 1930.)

The CBP regulations promulgated pursuant to the PVSA are found at section 4.80a of title 19 of the Code of Federal Regulations (19 CFR 4.80a) and are reflective of the above cited Office of the Attorney General decisions. These regulations provide, among other things, that a non-coastwise-qualified vessel which "embarks" a passenger at a port in the United States embraced within the coastwise laws (a "coastwise port") will be deemed to have landed that passenger in violation of the PVSA if the passenger "disembarks" at a different coastwise port on a voyage to one or more coastwise ports and a "nearby foreign port or ports" (as defined in 19 CFR 4.80a(a)(2); see also 19 CFR 4.80a(b)(2)). The terms "embark" and "disembark" are words of art which are defined as going on board a vessel for the duration of a specific voyage, and leaving a vessel at the conclusion of a specific voyage, respectively. (See 19 CFR 4.80a(a)(4).)

The references in section 4.80a to "nearby foreign ports" (defined in 19 CFR 4.80a(a)(2)) are the results of attempts by CBP to apply an Office of the Attorney General's opinion dated February 26, 1910 (28 O.A.G. 204). In that case, a foreign-flag vessel transported 615 passengers on a voyage around the world, beginning in New York and concluding in San Francisco. The Attorney General opined that since the primary object of the voyage was to visit various parts of the world on a pleasure tour returning home via California, and not to be transported in domestic commerce, the transportation was not in violation of the PVSA.

The 1910 Attorney General's opinion was extended to voyages that included foreign ports other than nearby foreign ports. (See Treasury Decision (T.D.) 68–285 (33 FR 16558), November 14, 1968.) However, voyages solely to one or more coastwise ports have always been considered predominantly coastwise. Therefore non-coastwise-qualified vessels engaging in such a voyage where passengers temporarily go ashore at a coastwise port have been deemed to have violated the PVSA.

III. CURRENT LAW AND POLICY

Pursuant to Public Law 109–304, 120 Stat. 1632, enacted on October 6, 2006, Title 46, United States Code, was substantially reorganized and recodified. Consequently, the PVSA is now codified at 46 U.S.C. 55103 and provides that no vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of $300 for each person so transported and landed, except one that: (1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and (2) has been issued a certificate of documentation with a coastwise endorsement or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

In 2003, Congress enacted Public Law 108–7, Division B, Title II, Section 211, for the purpose of revitalizing the oceangoing U.S.-flag cruise industry in Hawaii (the "2003 Act"). Three oceangoing U.S.-flag cruise ships, PRIDE OF ALOHA, PRIDE OF AMERICA and PRIDE OF HAWAII, were documented with coastwise privileges pursuant to the 2003 Act. These vessels entered regular service in Hawaii in 2004, 2005 and 2006, respectively, and pursuant to the express language of the 2003 Act, are limited in their operation to providing ". . . regular service transporting passengers between or among the islands of Hawaii . . ."

The CBP regulations promulgated pursuant to the PVSA are set forth in 19 CFR 4.80a and have remained unchanged throughout both the recodification of Title 46 of the United States Code and the enactment of the 2003 Act. They provide that a violation of the PVSA occurs when passengers "embark" (board a vessel for the duration of a voyage) a non-coastwise-qualified vessel at one U.S. port, and "disembark" (leave the vessel at the conclusion of a voyage) at a different U.S. port, unless they proceed with the vessel to a "distant foreign port" (i.e., any port not considered a "nearby foreign port" which is defined as any port located in North America, Central America, Bermuda, or the West Indies including the Bahamas). Currently, these regulations do not contain specific criteria for non-coastwise-qualified vessels on itineraries including U.S. ports and either "nearby" or "distant" foreign ports in order for such foreign port calls to be compliant with the PVSA.

To reiterate, the applicable CBP regulations provide that the PVSA is violated when a non-coastwise-qualified vessel transports a passenger on a voyage solely to one or more coastwise ports and the passenger disembarks or goes ashore temporarily at a coastwise port. (19 CFR 4.80a(b)(1).) Furthermore, a violation of the PVSA also occurs when a non-coastwise-qualified vessel transports a passenger on a voyage to one or more coastwise ports and a nearby foreign port or ports (but no other foreign port) and the passenger disembarks at a coastwise port other than the port of embarkation. (19 CFR 4.80a(b)(2).) However, there is no violation of the PVSA when a passenger is on a voyage to one or more coastwise ports and a distant foreign port or ports (whether or not the voyage includes a nearby foreign port or ports) and the passenger disembarks at a coastwise port, provided the passenger has proceeded with the vessel to a distant foreign port. (19 CFR 4.80a(b)(3).)

IV. REQUEST FROM MARAD TO PROVIDE GUIDANCE

The U.S. Department of Transportation Maritime Administration (MARAD) has requested that CBP take action to ensure enforcement of the PVSA. MARAD has asked CBP to address the recent activities of foreign-flag passenger vessels in the Hawaiian Islands that are

imposing economic hardship on the operations of coastwise-qualified cruise ship operators.

In April of 2007, the operator of the three U.S.-flag cruise vessels operating solely in Hawaii pursuant to the 2003 Act announced their intent to withdraw the PRIDE OF HAWAII from the Hawaii market and redeploy her to Europe. The operator intends to re-flag the vessel to foreign registry, directly resulting in the loss of over 1,100 crewmember jobs. The primary reason cited for this decision is the rapid increase in foreign-flag competition entering the Hawaii market from the West Coast. This competition is evidenced in published cruise itineraries of foreign-flag carriers offering a variety of round trip cruises that depart from a U.S. port, call at several Hawaiian ports, then proceed to Ensenada, Mexico for a brief period, usually in the early morning, and ultimately return to the original U.S. port of embarkation where the passengers disembark to complete their cruise. These cruises are often marketed as "Hawaii cruises" and except for the brief stop in the nearby foreign port of Ensenada, are purely coastwise in nature. It is these cruise itineraries that pose an imminent threat to the two remaining U.S.-flagged, coastwise endorsed passenger vessels that, pursuant to the 2003 Act, are currently engaging in cruise itineraries that include only ports of call within the Hawaiian Islands.

V. PRELIMINARY NOTICE

In response to MARAD's concerns, CBP sent letters to two carriers known to operate the itineraries in question, as well as to the Cruise Lines International Association, Inc., stating that CBP believes that these itineraries are contrary to the PVSA because it appears that the primary objective of the Ensenada stop is evasion of the PVSA. The letters further indicated that CBP is taking steps to publish this position.

VI. CBP'S PROPOSED INTERPRETIVE RULE

Accordingly, in this document, CBP is proposing to provide that cruise itineraries for non-qualified coastwise vessels which allow passengers to board at a U.S. port, call at several Hawaiian ports, proceed to a foreign port or ports for a brief period, and then ultimately return to the original U.S. port of embarkation for disembarkation are not consistent with the PVSA and the regulations promulgated pursuant thereto. Specifically, CBP interprets a voyage to be "solely to one or more coastwise ports" even where it stops at a foreign port, unless the stop at the foreign port is a legitimate object of the cruise. CBP will presume that a stop at a foreign port is not a legitimate object of the cruise unless:

(1) the stop lasts at least 48 hours at the foreign port;
(2) the amount of time at the foreign port is more than 50 percent of the total amount of time at the U.S. ports of call; and

(3) the passengers are permitted to go ashore temporarily at the foreign port.

Accordingly, CBP proposes to adopt an interpretive rule under which it will presume that any cruise itinerary that does not include a foreign port call that satisfies each of these three criteria constitutes coastwise transportation of passengers in violation of 19 CFR 4.80a(b)(1).

Dated: November 16, 2007

W. RALPH BASHAM,
Commissioner,
Customs and Border Protection.

[Published in the Federal Register, November 21, 2007 (72 FR 65487)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, November 21, 2007

The following documents of U.S. 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,
Executive Director,
Regulations and Rulings Office of Trade.

GENERAL NOTICE

19 CFR PART 177

WITHDRAWAL OF PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF LOW FAT BUTTER SUBSTITUTES

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

ACTION: Notice of withdrawal of proposed revocation of tariff classification ruling letters and treatment relating to the classification of low fat butter substitutes.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs

Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection ("CBP") is withdrawing its intent to revoke two rulings concerning the tariff classification of low fat butter substitutes under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is withdrawing its intent to revoke any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation was published on February 7, 2007, in Volume 41, Number 7, of the CUSTOMS BULLETIN. Two comments were received in response to this notice opposing the proposed revocation.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, Tariff Classification and Marking Branch, (202) 572–8784.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on 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, CBP published a notice in the February 7, 2007, CUSTOMS BULLETIN, Volume 41, Number 7, proposing to revoke New York Ruling Letter (NY) B80051, dated December 11, 1996, and NY B85495, dated May 14, 1997, pertaining to the tariff classification of low fat butter substitutes, and to revoke any treatment accorded to substantially identical merchandise. Two comments were received in response to this notice.

In NY B80051 and NY B85495, the classification of low fat butter substitutes was determined to be in subheading 0405.20.4000, HTSUS, which provides for "butter and other fats and oils derived from milk; dairy spreads: dairy spreads: butter substitutes, whether in liquid or solid state: other."

CBP published its position that the merchandise was not correctly classified in NY B80051 and NY B85495 because under the court decision in *Rudolph Faehndrich v. United States*, 49 Cust. Ct. 1 (1962), a butter substitute must be able to take the place of butter in substantially all respects and substantially all conditions. Because low fat butter substitutes are not recommended for baking and frying (see the websites of the National Dairy Counsel and Dairy Management Inc. at http://www.nationaldairycouncil.org/nationaldairycouncil/nutrition/products/product_butter.pdf, and http://www.innovatewithdairy.com/InnovateWithDairy/Articles/IF_Facts_Butter_062905), CBP proposed to classify low fat butter substitutes in subheading 0405.20.6000, or 0405.20.7000, HTSUSA ("annotated"), the in-quota and over-quota provisions that provide for "dairy spreads: other: dairy products described in additional U.S. note 1 to chapter 4: described in additional U.S. note 10 to this chapter and entered pursuant to its provisions," and "dairy products described in additional U.S. note 1 to chapter 4: other," respectively.

However, one commenter, citing the court in *Bausch & Lomb v. United States*, 148 F.3d 1363 (1998) and in *Lonza, Inc. v. United States*, 46 F3d 1098, makes a compelling argument that the 1962 *Faehndrich* case does not control the meaning of the term "butter substitutes" under the HTSUS, because there have been significant changes to the nomenclature from the Tariff Act of 1930 to the HTSUS. In *Bausch and Lomb*, the court noted that the subject electric toothbrushes had long been classified under the toothbrush provision. *Bausch & Lomb* at 1387–68. However, the text of the tariff provision in cases under the HTSUS had changed. The provision being construed in the *Bausch and Lomb* case, subheading 9603.21, provided for "Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles) . . : Toothbrushes . . . for use on the person, including such brushes constituting parts of appliances: Toothbrushes . . . ." *Id.* at 1366. The predecessor to subheading 9603.21 was Item 750.40 in the Tariff Schedules of the United States ("TSUS"). That item covered "Other brooms and brushes: Tooth brushes . . . ." *Id.* at 1367. The court states:

> Noticeably absent from this provision is the "including" parenthetical currently present in Subheading 9603.21.00. We can safely assume that Congress changed the language for a reason. "A change in the language of a statute is generally construed to import a change in meaning. . . ." Ruth F. Sturm, Customs Laws and Administration § 51.7 at 57 (1995); see also *Schott Optical Glass, Inc. v. United States, 11 C.I.T. 899, 678 F.*

> *Supp. 882, 887–88 (1987), aff'd, 862 F.2d 866 (Fed. Cir. 1988)*. Moreover, we should construe the statute, if at all possible, to give effect and meaning to all the terms. See *United States v. Menasche, 348 U.S. 528, 539, 99 L. Ed. 615, 75 S. Ct. 513 (1955); Inhabitants of Montclair v. Ramsdell, 107 U.S. 147, 152, 27 L. Ed. 431, 2 S. Ct. 391 (1883)* ("It is the duty of the court to give effect, if possible, to every clause and word of a statute . . . ."). To construe Heading 9603.21 as coextensive with Item 750.40 in the manner advocated by Bausch & Lomb would, in effect, read the "including" parenthetical right out of the Heading. Our reading of Heading 9603 gives effect to the "including" language by ensuring that, inter alia, brushes that are part of appliances, but which are imported separately, are properly classified under Heading 9603, even though they could arguably be considered merely a part of the appliance.
>
> *Id.*

In 1962, item 709 of the Tariff Act of 1930 read in pertinent part "Butter: . . . Oleomargerine and other butter substitutes." In *Faehndrich*, the court held that butter substitutes must be *ejusdem generis* to margarine under this construction.

Under the Tariff Classification Act of 1962, the Tariff Schedules of the United States (TSUS) were created. Part 4, SubPart B, Item 116.30 provides for "Butter, and fresh or sour cream containing over 45 percent of butterfat: Oleomargarine and butter substitutes." The word "other" was deleted from the language in the Tariff Act of 1930, and the 45 percent butterfat threshold was established for fresh or sour cream of that heading.

Item 116.30 remained the same until 1976, when the provision for "Oleomargarine and butter substitutes" acquired two breakouts. Item 116.30.20 provided for "Butter substitutes containing over 45% butterfat, provided for in item 950.06" (the quota provision). Item 116.30.40 provided for "Other."

In 1988, the Harmonized Tariff Schedule of the United States (HTSUS) was created. To assist in this transition, the United States International Trade Commission published a cross referencing guide between the TSUS and the HTSUS (Continuity of Import and Export Trade Statistics After Implementation of the Harmonized Commodity Description and Coding System, Report to the President on Investigation No. 332–250 Under Section 332 of the Tariff Act of 1930, published January 1988 by the United States International Trade Commission, Annex I "Cross-Reference Between the TSUSA and the HTS"). TSUS item 116.30.40, the provision for "Oleomargarine and butter substitutes: other," cross referenced to HTS subheading 1517.10, the provision for "Margarine, excluding liquid margarine." The "other" breakout at the time of the TSUS clearly referred

only to margarine, not a butter substitute other than margarine containing 45% butterfat or less.

However, Annex I also cross-referenced TSUS item 116.30.20 to HTS subheadings 0405.00.80 and 2106.90.15. These provisions read as follows:

0405 Butter and other fats and oils derived from milk:

Butter:

0405.00.70 Described in additional U.S. note 1(b) to this chapter

0405.00.75 Other

0405.00.80 Other

20 Anhydrous milk fat

40 Other

* * * * *

2106 Food preparations not elsewhere specified or included:

2106.90 Other

2106.90.15 Butter substitutes, whether in liquid or solid state, containing over 15 percent by weight of butter or other fats or oils derived from milk

10 Containing over 45 percent butterfat . .

40 Other

Here we see that at the time of the conversion to the HTSUS, butter substitutes with between 15 and 45% by weight of butterfat were provided for in subheading 2106.90.1540, HTSUS. By the present day, this formulation changed again to add the term "dairy spreads", defined at containing between 39 and 80% milkfat. The provision was also moved to Chapter 4, HTSUS.

The provisions of the 2007 HTSUS state:

0405 Butter and other fats and oils derived from milk; dairy spreads:

* * *

0405.20 Dairy spreads:

Butter substitutes, whether in liquid or solid state:

Containing over 45 percent by weight of butterfat:

* * * * *

0405.20.40		Other
		Other:
		Dairy products described in additional U.S. note 1 to chapter 4:
*	*	* * *
0405.20.60		Described in additional U.S. note 10 to this chapter and entered pursuant to its provisions.
0405.20.70		Other 1/
*	*	* * *

The HTSUS notes to Chapter 4 state, in pertinent part, as follows:

2. For the purposes of heading 0405:

* * * * *

(b) The expression "dairy spreads" means a spreadable emulsion of the water-in-oil type, containing milkfat as the only fat in the product, with a milkfat content of 39 percent or more but less than 80 percent by weight.

EN 04.05 (b), states, in pertinent part, the following:

This group covers dairy spreads, i.e., spreadable emulsions of the water-in-oil type, containing milkfat as the only fat in the product, and having a milkfat content of 39% or more but less than 80% by weight (see Note 2 (b) to this Chapter). Dairy spreads may contain optional ingredients such as cultures of harmless lactic-acid-producing bacteria, vitamins, sodium chloride, sugars, gelatine, starches; food colours; flavours; emulsifiers; thickening agents and preservatives.

The legal language now explicitly provides for dairy spreads that contain as little as 39% butterfat in Chapter 4. Construing the term "butter substitute" to mean a substitute that performs exactly as butter because it contains a similar amount of butterfat would empty subheading 0405.20.40, HTSUS. Rather, a dairy spread that is used as a butter substitute with between 39 and 45% fat could be classified in subheading 0405.20.40 HTSUS, provided the product substitutes for butter.

Which brings us back to the question of the meaning of the term "butter substitute." The meaning of a tariff term is determined by its common and commercial meaning absent legal language to the contrary. To ascertain the common meaning of a tariff term, courts may refer to dictionaries, scientific authorities, and similarly reliable resources (*See, The Mead Corp. v. United States*, 283 F.3d 1342, 1346 (Fed. Cir. 2002)). The word "substitute" when describing an object,

rather than a person, is defined as "A thing put in the place of another" http://dictionary.oed.com. The Oxford English Dictionary online gives this technical definition and example of the use of the term substitute:

> **b.** An artificial food-stuff intended to supply the place of a natural food; also, a cheaper article or ingredient substituted for one that is recognized or patented . . . . **1888** *Times* 3 Jan. 9/5 Hereafter persons who eat butter substitutes will have to avow openly their meanness whether of spirit or of purse. . . .

One commenter submitted evidence that their product can be used in a one-to-one substitution with butter in the production of iced confections and baked goods. Furthermore, both commenters submitted evidence that the light butter substitutes would fry eggs in butter's stead, although these products are not typically used commercially in this manner. Given the evidence that the artificial dairy spreads at issue in these cases take the place of natural butter in a one-to-one substitution in commercial goods, they should remain classified as "other butter substitutes" in subheading 0405.20.40, HTSUS.

For the reasons stated above, CBP is hereby withdrawing its intent to revoke NY B80051 and NY B85495 and any other ruling not specifically identified. Additionally, CBP is withdrawing its intent to revoke any treatment previously accorded by CBP to substantially identical transactions. In so doing, we take heed to what the court said in *Clarendon Marketing v. U.S.*, 144 F.3d 1464 (Fed. Cir., 1998), when the tariff language did not bear out Custom's argument. The court was "not unsympathetic" to Customs' policy argument, but stated that it must honor the "primacy of the legislative branch in the writing of law" and urged that "Congress has both the opportunity and the authority to undertake that activity [the redrafting of these statutory provisions]." *Id.* at 1470. Here we must defer to Congress to redraft the statutory provisions if indeed they do not now represent the policy Congress wished to express.

Dated: November 7, 2007

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN MARKING REQUIREMENTS OF CERTAIN ARTIST CANVASES

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

ACTION: Notice of modification of one ruling letter and revocation of treatment relating to the country of origin marking requirements of certain artist canvases.

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 U.S. Customs and Border Protection (CBP) is modifying one ruling letter relating to tariff classification and the country of origin marking requirements of certain artist canvases. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 41, No. 23, on May 30, 2007. Three 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 3, 2008.

FOR FURTHER INFORMATION CONTACT: Sasha Kalb, Tariff Classification and Marking Branch, at (202) 572–8791.

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, a notice was published in the Customs Bulletin, Vol. 41, No. 23, on May 30, 2007, proposing to modify one ruling letter, New York Ruling (NY) L89513, dated December 27, 2005, relating to the tariff classification and country of origin marking requirements of certain artist canvases. Three comments were received in response to the notice. As stated in the proposed notice, this modification will cover any rulings on the subject 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 ruling identified above. 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 have advised 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 is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY L89513 and any other ruling not specifically identified, to reflect the proper country of origin designation as detailed in Headquarters Ruling Letter (HQ) H007440, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

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

DATED: November 9, 2007

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H007440
November 9, 2007
CLA–2 OT:RR:CTF:TCM H007440 ADK
CATEGORY: Classification and Marking
TARIFF NO.: 5901.90.40

MR. R. KEVIN WILLIAMS
RODRIQUEZ O'DONNELL ROSS FUERST
GONZELEZ WILLIAMS & ENGLAND, P.C.
1211 Connecticut Avenue, N.W.
Washington, DC 20036

RE: Country of Origin Marking of an Artist Canvas; Modification of New York Ruling (NY) L89513

DEAR MR. WILLIAMS:

On December 12, 2006, the Bureau of Customs and Border Protection (CBP) received a ruling request for merchandise substantially similar to your artist canvas classified in NY Ruling Letter (NY) L89513. We have since reviewed NY L89513, dated December 27, 2005, and although the classification determination in that ruling was correct, we find the country of origin determination to be in error.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification was published on May 30, 2007, in the Customs Bulletin, Volume 41, No. 23. Three comments were received in response to this notice and are addressed in the Law and Analysis section of this ruling.

FACTS:

The subject article, imported by Design Ideas, Ltd, is a prepared, framed artist canvas. The manufacturing process is as follows:

India

The 100% cotton fabric is woven from Indian yarn and is produced in two weights: 225 grams per square meter and 310 grams per square meter. The fabric canvas is then primed with gesso[1] to make the material suitable for painting. The primed canvas is shipped to China for further fabrication.

China

The primed rolls of canvas are cut to the appropriate size for framing.
The cut canvas is then stretched over a wooden frame which is produced in China.
The edges of the canvas are folded into a groove on the back of the frame and a spline[2] is inserted to hold the stretched canvas in place.

---

[1] Gesso is used to prime the cotton canvas. The gesso seals the canvas and creates a smoother surface on which to paint. Modern gesso, which is a combination of calcium carbonate with an acrylic polymer medium and a pigment, is suitable for use on a canvas because it is flexible when dry. According to the importer, a separate stiffening agent was not used on the cotton canvas.

[2] Splines are the plastic "springs" sometimes used to hold frames together.

The canvas and spline are then stapled to hold them in place.
The completed canvas is finally labeled and packaged for shipment to the United States.

ISSUE:

What is the country of origin of the artist canvas?

LAW AND ANALYSIS:

Section 334 of the Uruguay Round Agreements Act (URAA) (codified at 19 U.S.C. §3592), enacted on December 8, 1994, provided rules of origin for textiles and apparel entered, or withdrawn from warehouse for consumption, on or after July 1, 1996. Section 102.21, CBP Regulations (19 C.F.R. §102.21), published September 5, 1995, in the Federal Register, implements Section 334 (60 FR 46188). Section 334 of the URAA was amended by section 405 of the Trade and Development Act of 2000, enacted on May 18, 2000, and accordingly, §102.21 was amended (68 FR 8711). Thus, the country of origin of a textile or apparel product shall be determined by the sequential application of the general rules set forth in paragraphs (c)(1) through (5) of §102.21. The relevant provisions are set forth below. We will consider each of these rules in turn:

> (c) *General rules.* Subject to paragraph (d) of this section, the country of origin of a textile or apparel product shall be determined by sequential application of paragraphs (c) (1) through (5) of this section and, in each case where appropriate to the specific context, by application of the additional requirements or conditions of §§ 102.12 through 102.19 of this part.
>
> (1) The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.
>
> (2) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.
>
> (3) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section:
>
> (i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or
>
> (ii) Except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90, and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.
>
> (4) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

* * *

In NY L89513, CBP concluded that the country of origin could not be determined by application of paragraphs §102.21 (c) (1) to (c) (3). With respect to paragraph (c)(3) specifically, CBP determined that the artist canvas component pieces did not exist in essentially the same condition as found in the finished good. As a result, the country of origin was found to be "the single country in which the most important assembly or manufacturing process occurred." §102.21 (c)(4). We now find that the analysis of the term "wholly assembled," as it pertains to paragraph (c)(3), was in error.

The general rules set forth in paragraphs (c)(1) through (5) of §102.21 must be applied sequentially. Applying paragraph (c)(1), we agree with the conclusion in NY L89513 that it is inapplicable. The subject canvas was neither wholly obtained nor wholly produced in a single country.

Paragraph (c)(2) is similarly inapplicable. According to (c)(2), the country of origin is the single country in which the good underwent a tariff change specified in 19 C.F.R. §102.21(e). The relevant tariff change rules are as follows:

5901–5903 (1) Except for fabric of wool or of fine animal hair, a change from greige[3] fabric of heading 5901 through 5903 to finished fabric of heading 5901 through 5903 by both dyeing and printing when accompanied by two or more of the following finishing operations: bleaching, shrinking, fulling[4], napping[5], decating[6], permanent stiffening, weighting, permanent embossing, or moireing[7]; or

(2) If the country of origin cannot be determined under (1) above, a change to heading 5901 through 5903 from any other heading, including a heading within that group, **except from heading** 5007, 5111 through 5113, **5208 through 5212**, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002 through 6006, and provided that the change is the result of a fabric making process.

(Emphasis added)

The canvas was not subjected to any of the processes detailed in subsection (1) in either India or China. It is not dyed and printed, nor does it undergo any of the processes listed. Furthermore, the canvas did not undergo a tariff shift, as mandated by subsection (2). When exported from India to China, the 100% cotton fabric is classifiable under heading 5901, HTSUS, which provides for "[t]extile fabrics coated with gum or amylaceous sub-

---

[3] A term used to describe fabrics in the unfinished state, after they have been woven and before dyeing or finishing. Fairchild's Dictionary of Textiles, 264 (2nd Ed. 1970).

[4] A finishing process in the manufacture of woolens in which the newly woven cloth is felted or compressed into smooth, tight finish. *Id.* at 245.

[5] A finishing process consisting of raising a nap (a fuzzy or downy surface of fabric covering either one side or both) on the fabric, which may be either woven or knitted. *Id.* at 391.

[6] A method of sponging fabrics to set the width and length to improve luster and hand finish. *Id.* at 176.

[7] A finishing process which produces a wavy or rippling pattern with engraved rollers which press the design into the fabric. *Id.* at 376.

stances, of a kind used for the outer covers of books or the like; tracing cloth; prepared painting canvas; buckram and similar stiffened textile fabrics of a kind used for hat foundations." Through the processing in China, the fabric becomes the artist canvas. There is no tariff shift at all because the fabric and finished artist canvas are classifiable in the same heading. As a result, the country of origin cannot be determined according to (c)(2).

We next consider (c)(3). As a threshold matter, we note that subsection (i) is *prima facie* inapplicable because the cotton canvas was not knit to shape. Only subsection (ii) is potentially applicable to the subject artist canvas. Subsection (ii) identifies the country of origin for goods which are "wholly assembled" in a single country. The term "wholly assembled" is defined in §102.21(a)(6), which provides, in pertinent part:

> The term "wholly assembled" when used with reference to a good means that all components, of which there must be at least two, **preexisted in essentially the same condition as found in the finished good** and were combined to form the finished good in a single country, territory, or insular possession. . . .
>
> (Emphasis added).

The subject merchandise is comprised of a one-piece cotton canvas and a wooden frame. It therefore satisfies the §102.21(a)(6) requirement that there be at least two preexisting components. At issue is whether these components exist in essentially the same condition as found in the finished good.

Counsel for the importer, argues that "the two or more preexisting components do not exist in this situation. The gesso primed canvas is imported into China in bulk rolls and is cut to the proper shape in China[8]." Counsel misinterprets the relevant test. With regards to "wholly assembled," CBP looks to the condition of the component pieces immediately prior to completion. Stated differently, the test requires that if the completed merchandise were disassembled, the disassembled components would exist in the same condition as they did immediately prior to assembly. See Headquarters Ruling Letter (HQ) 968229, dated July 18, 2006 (holding that the components of an imported two-layer fabric laminate consisting of a face fabric with a membrane laminated to its back would preexist in essentially the same condition before and after the lamination process, although permanently joined).

Applying this test, we find that the component pieces – the canvas, the wooden frame, the spline and the staples – preexisted in essentially the same condition as found in the finished good. Prior to assembly, the primed canvas was cut and stretched and the wooden frame was fully formed. If disassembled, the component pieces would consist of a primed, cut and stretched piece of canvas, and a fully formed wooden frame. As a result, the

---

[8] Counsel also refers to the Substantial Transformation test, as relied upon by CBP prior to the promulgation of §102.21. §102.21, published on September 5, 1996 in the Federal Register, of CBP regulations provide objective standards with which to determine the "substantial transformation" of textiles and textile products. Counsel notes that under the prior interpretation of the substantial transformation test, the country or origin was the location in which the components were cut to shape. Even under that test, however, cutting to length or width alone was insufficient to constitute a substantial transformation. Furthermore, whether the fabric was "cut to shape" or merely "cut to length" is not relevant here.

subject article meets the definition of "wholly assembled," and the country of origin may be determined according to (c)(3).

Three comments were received in response to publication of the proposed revocation. The first two commenters argue that the 19 CFR §102.21 was incorrectly applied to the present matter. Instead, they claim that CBP should have utilized the rules of origin for textile and apparel products, set forth in section 334 of the Uruguay Round Agreements Act, and codified in 19 USC §3592. As with 19 CFR §102.21, the §3592 rules are applied sequentially. They provide, in pertinent part:

§3592. Rules of origin for textile and apparel products

(b) Principles

(1) In general. Except as otherwise provided for by statute, a textile or apparel product, for purposes of the customs laws and administration of quantitative restrictions, originates in a country, territory, or insular possession, and is the growth, product, or manufacture of that country, territory, or insular possession, if –

(A) the product is wholly obtained or produced in that country, territory, or possession;

(B) the product is a yarn, thread, twine, cordage, rope, cable, or braiding and –

i. the constituent stable fibers are spun in that country, territory, or possession, or

ii. the continuous filament is extruded in that country, territory or possession;

(C) **the product is a fabric**, including a fabric classified under chapter 59 of the HTS, and the constituent fibers, filaments, or yarns are woven, knitted, needled, tufted, felted, entangled, or transformed by any other fabric-making process in that country, territory, or possession; or

(D) the product is any other textile or apparel product that is wholly assembled in that country, territory, or possession from its component pieces.

(Emphasis added)

All parties concede that the subject canvas does not meet the terms of (b)(1)(A) or (b)(1)(B). It was not "wholly obtained or produced" in one country, nor is it a "yarn, thread, twine, cord, rope, cable, or braid." The commenters instead contend that section (b)(1)(C) should be used to determine origin because the artist canvas is a "fabric." Specifically, the first comment states that "the artist canvases are 'fabrics' as defined under the Harmonized Tariff Schedule of the United States (HTSUS). They are classified in HTSUS chapter 59, which covers 'impregnated, coated, covered, or laminated textile fabrics that are impregnated or coated with primer." Classification under chapter 59[9], however, does not necessitate a determination that an article is a simple fabric.

The term "fabric" is not specifically defined in the HTSUS or its legislative history. When a tariff term is not defined, the term's correct meaning is presumed to be its common meaning in the absence of evidence to the contrary. *See* Rohm & Haas Co. v. United States, 727 F.2d 1095 (CAFC 1984). The

---

[9] Chapter 59 provides for "impregnated, coated, covered or laminated textile fabrics; textile articles of a kind suitable for industrial use."

first commenter argues that the term "fabric" is defined by 19 CFR §102.21(b)(5). That provision[10], however, identifies the meaning of the term "textile and apparel products," not "fabric." At issue is the correct meaning of the specific term "fabric."

The Court of International Trade has defined the term fabric as "a cloth produced [especially] by knitting, weaving, or felting fibers." Pac Fung Feather Company and Natural Feather & Textiles v. United States, 19 CIT 1451, 1459 (1995) citing The American Heritage Dictionary 484 (2d 1982)[11]. This definition applies only to the cotton component of the subject article, prior to its assembly with the wooden frame. The cotton itself is a "cloth produced . . . by weaving. . . . " Contrary to counsel's assertion, however, the completed artist canvas is not a mere "fabric." After assembly, the woven cotton loses its individual identity as a fabric and becomes an integral part of the completed article – the framed artist canvas. The exact point in the processing at which the fabric became an integral part of the finished article occurred when the canvas was permanently stapled to its wooden frame. Coraggio Design, Inc. v. United States, 12 CIT 143, 145 (1988) (The point in the processing at which material becomes a partly finished article must be determined on the basis of the circumstances of each case). From that point, the identity of the cotton fabric is permanently altered because it has only one potential application – its use as a framed painting surface. See HQ 956965, December 13, 1994. Because the artist canvas does not meet the definition of the term "fabric," §3592 (b)(1)(C) is inapplicable. The country of origin for the artist canvas cannot be determined by the country in which the fabric was produced.

The second commenter asserts that the application of §102.21 (c)(3) is inconsistent with our conclusion in HQ 968229[12]. In that ruling, CBP determined the country of origin of certain laminated fabrics. We noted:

> We recognize that if 19 C.F.R. §102.21, as it currently stands, is applied to the certain laminated fabrics at issue, their country of origin would not be Taiwan. Rather, if the general rules of the Regulation (19 C.F.R. §102.21(c)) are applied in sequential order, 19 C.F.R. §102.21(c)(3)(ii) would be applicable to the fabrics. . . . We recognize the inconsistency between 19 U.S.C. §3592(b)(1)(C) and 19 C.F.R. §102.21(c) and intend to take necessary action to make the Regulation consistent with the statute in regard to laminated fabrics like those at issue.

According to the commenter, the "same inconsistency between statute and regulation arises from the proposed modification of *New York Ruling Letter L89513* and must be resolved by following the statute." We disagree. Unlike the subject artist canvas, the merchandise under consideration in HQ 968229 was composed entirely of fabric. For the reasons stated above, §3592

---

[10] 19 CFR §102.21(b)(5) defines the term "textile and apparel products" as "any good classifiable in Chapters 50 through 63, Harmonized Tariff Schedule of the United States (HTSUS)."

[11] The term fabric, or cloth, is also defined as "a pliable material made usually by weaving, felting, or knitting natural or synthetic fibers and filaments." See www.m-w.com

[12] In addition to HQ 968229, the second commenter also relies on HQ 966062, dated March 11, 2003 and HQ 959437, dated February 19, 1997. Both rulings determined the country of origin of certain laminated fabrics. As a result, they are inapplicable to the present matter.

(b)(1)(C) was therefore applicable. Section 3592 (b)(1)(C) cannot be utilized in this instance, however, because the artist canvas is not a fabric. The inconsistency between 19 U.S.C. §3592(b)(1)(C) and 19 C.F.R. §102.21(c) is not relevant to the subject consideration.

As with §102.21, the rules of §3592 are applied sequentially. Based on the above analysis, subsections (b)(1)(A), (b)(1)(B), and (b)(1)(C) are inapplicable to the subject article. If §3592 is to be applied, we must next consider subsection (b)(1)(D), which identifies the country of origin as the country, territory, or possession in which a textile or apparel product was "wholly assembled." In the proposed revocation, CBP determined that the manufacturing process in China satisfied the definition of "wholly assembled" as applied to §102.21 (c)(3). The component pieces of the artist canvas, of which there were more than two, "preexisted in essentially the same condition as found in the finished good and were combined to form the finished good in a single country. . . . " The same analysis applies to the term "wholly assembled" in §3592 (b)(1)(D). Under §3592 (b)(1)(D), the country of origin of the subject artist canvas would also be China.

The second commenter suggests that the term "wholly assembled," as used in §102.21 (c)(3) and §3592(b)(1)(D) applies only to "textile components and disregards non textile components." Counsel notes that:

> . . . the strict application of 19 CFR 102.21(c)(3)(ii) would result in the country of assembly being the country of the products assembled from textile and non-textile components. This result is inconsistent with the statute. . . . This inconsistency . . . can only be eliminated by interpreting the definition of 'wholly assembled' to encompass only textile components.

As a threshold matter, CBP does not concur that this country of origin result is inconsistent with the statute. Furthermore, there is no justification for the conclusion that the term "wholly assembled" encompasses only textile components. The tariff shift rules of §102.21 specify that the term "wholly assembled" is not limited to textile components. For example, the rule for heading 5909, HTSUS, provides, in pertinent part:

> A change to **textile hosepiping** with . . . accessories of **nontextile material**, of heading 5909, from any heading, including a change from another good of heading 5909, provided that the change is the result of the good being **wholly assembled** in a single country, territory, or insular possession.
>
> (Emphasis added)

As shown by this rule, the term "wholly assembled," as used in §102.21 applies to both textile and non-textile components of finished merchandise.

In addition, CBP has previously determined that the assembly of textiles with non-textile components confers origin under the §102.21 rules. In NY K86934, dated July 7, 2004, CBP issued a country of origin determination for certain polypropylene belts. The belts at issue were manufactured from polypropylene made in Taiwan. The fabric was then shipped to China where it was cut to length and attached to metal grommets and a metal buckle. The relevant tariff shift rule for the subject belt was as follows:

> 6215–6217 (1) If the good consists of two or more component parts, a change to an assembled good of heading 6215 through 6217 from unassembled components, provided that the change is the result of the good

being **wholly assembled** in a single country, territory, or insular possession.

(Emphasis added)

CBP determined that the belt satisfied this rule because it was "assembled in a single country, that is China, as per the terms of the tariff shift requirement." CBP reached the same conclusion in NY G84367, dated December 11, 2000. In that case, the nylon webbing for a belt was manufactured in Spain, the belt buckle was manufactured in Taiwan, and the textile and non-textile components were assembled in China. Pursuant to the tariff shift rules for heading 6215–6217, CBP found that the assembly procedure in China conferred origin. Based on these rulings, it is clear that the "wholly assembled" requirement is not limited to textile components.

The third commenter argues that the components did not pre-exist in essentially the same condition, as required by §102.21(a)(6). Counsel believes that "the stretching of the canvas over the frame initiates the assembly process and that a stretched canvas is not in essentially the same condition as the canvas before stretching." Counsel does not offer any justification for this argument. In addition, this argument overlooks CBP's current understanding of the phrase "pre-existed in essentially the same condition." CBP looks to the condition of the component pieces immediately prior to completion. Stated differently, the test requires that if the completed merchandise were disassembled, the disassembled components would exist in the same condition as they did immediately prior to assembly. See HQ 968229. Prior to assembly, the canvas was primed, cut and stretched and the wooden frame was fully formed. If disassembled, the component pieces would consist of a primed, cut and stretched piece of canvas, and a fully formed wooden frame.

The third commenter also argues that the securing of the canvas to the frame is a minor process and should be disregarded under 19 CFR §102.17[13]. Although the assembly process is simple, it is a crucial step in the formation of the artist canvas. Furthermore, the assembly process does not satisfy any of the enumerated "non-qualifying operations" of §102.17. At the time the canvas is secured to the wooden frame, it is not dismantled or disassembled, simply packed, diluted or collected. It does not undergo a change in end-use because the canvas's properties have been dedicated to use as a painting surface after it has been coated with gesso in China. Even if the

---

[13] §102.17 provides: **Non-qualifying operations.** A foreign material shall not be considered to have undergone an applicable change in tariff classification specified in §102.20 or §102.21 or to have met any other applicable requirements of those sections merely by reason of one or more of the following:

(a) A change in end-use;

(b) Dismantling or disassembly;

(c) Simple packing, repacking or retail packaging without more than minor processing;

(d) Mere dilution with water or another substance that does not materially alter the characteristics of the material; or

(e) Collecting parts that, as collected, are classifiable in the same tariff provision as an assembled good pursuant to General Rule of Interpretation 2(a), without any additional operation other than minor processing.

canvas did undergo a change in end use, however, it still meets the terms of §102.21 because the assembly process is the origin conferring operation, not the final use of the cotton canvas.

Finally, the third commenter asks that "in the event Customs chooses to revoke the prior treatment . . . it delay the effective date of the ruling for a six-month period." According to the commenter, this delay will enable importers to comply with CBP's determination in the present matter. This request is based on an obsolete concept which was known as detrimental reliance. The rule of law defining detrimental reliance was clearly delineated in 19 CFR 177.9(e)(1)[14]. This subsection has now been deleted. See HQ 961213, dated January 30, 1998. On December 8, 1993, the President signed into law the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057). Title VI of that Act contained provisions pertaining to Customs Modernization and thus is commonly referred to as the Customs Modernization Act or "Mod Act." The Mod Act included, in section 623, an extensive amendment of section 625 of the Tariff Act of 1930 (19 U.S.C. 1625) which, prior to that amendment, simply required that the Secretary of the Treasury publish in the Customs Bulletin, or otherwise make available to the public, any precedential decision with respect to any customs transaction within 120 days of issuance of the decision.

On August 16, 2002, CBP published its final amendments to those provisions of the Customs Regulations that concern the issuance of administrative rulings and related written determinations and decisions on prospective and current transactions arising under the customs and related laws[15]. Pursuant to those amendments, 19 CFR 177.9(e)(1), which previously allowed CBP to delay a ruling for up to 90 days from the date of issuance, was eliminated and replaced by 19 CFR §177.9(c). That regulation provides, in pertinent part:

> Reliance on ruling letters by others. Except when public notice and comment procedures apply under § 177.12, a ruling letter is subject to modification or revocation by Customs without notice to any person other than the person to whom the ruling letter was addressed. Accordingly, no other person should rely on the ruling letter or assume that the principles of that ruling will be applied in connection with any transaction other than the one described in the letter. However, any person eligible to request a ruling under § 177.1(c) may request information as to whether a previously-issued ruling letter has been modified or revoked by writing the Commissioner of Customs, Attention: Office of Regulations and Rulings, Washington, DC 20229 . . . .

---

[14] That rule provided: The Customs Service will from time to time issue a ruling letter covering a transaction or issue not previously the subject of a ruling letter and which has the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions of either the recipient of the ruling letter or other parties. Although such a ruling letter will generally be effective on the date it is issued, the Customs Service may, upon application by an affected party, delay the effective date of the ruling letter, and continue the treatment previously accorded the substantially identical transaction, for a period of up to 90 days from the date the ruling letter is issued.

[15] See 67 FR 53483

Thus, we no longer have the authority to delay the implementation of a classification ruling, such as requested here, based upon an importer's showing of reliance. See HQ 966344, dated February 13, 2004. Rather, the delayed effective date provision of 19 USC §1625 will be applicable.

HOLDING:

The manufacturing process in China satisfies the definition of "wholly assembled" and that the country of origin determination in NY L89513 should therefore have concluded with paragraph (c)(3). By application of §102.21 (c)(3), the country of origin for the prepared artist's canvas is China. The canvas or its outer container should be marked conspicuously, legibly and permanently pursuant to 19 U.S.C. §1304[16].

Consistent with NY L89513, the subject artist canvas is classifiable under heading 5901, HTSUS. Specifically, it is classifiable under subheading 5901.90.40, HTSUS, which provides for: "Textile fabrics coated with gum or amylaceous substances, of a kind used for the outer covers of books or the like; tracing cloth; prepared painting canvas; buckram and similar stiffened textile fabrics of a kind used for hat foundations: Other: Other." The 2007, column one, general rate of duty is 4.1 percent *ad valorem*.

The subject artist canvas of fibers other than man-made, falls within textile category designation 229. At the present time goods produced in China and falling within this textile category are subject to quota and visa requirements. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

Please note that the subject article may fall within the scope of an antidumping order concerning certain artist canvases from the People's Republic of China. See 71 FR 31154, June 1, 2006. Scope determinations are under the authority of the Department of Commerce (DOC). A list of AD/CVD proceedings at the Department of Commerce (DOC) and their product coverage can be obtained from the DOC website at: http://ia.ita.doc.gov, or you may write to them at the U.S. Department of Commerce, International Trade Administration, Office of Antidumping Compliance, 14th Street and Constitution Avenue, N.W. Washington, DC 20230. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by CBP.

---

[16] 19 U.S.C. §1304 provides as follows: "Every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article."

EFFECT ON OTHER RULINGS:

NY L89513, dated December 27, 2005, is hereby modified. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN COATED FABRICS

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to the classification of a certain coated fabrics.

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 U.S. Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain coated fabrics. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 41, No. 37, on September 5, 2007. 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 3, 2008.

FOR FURTHER INFORMATION CONTACT: Sasha Kalb, Tariff Classification and Marking Branch, at (202) 572–8791.

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, a notice was published in the Customs Bulletin, Vol. 41, No. 37, on September 5, 2007, proposing to revoke one ruling letter, New York Ruling (NY) M80456, dated March 7, 2006, relating to the tariff classification of a certain coated fabrics. No comments were received in response to the notice. As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. 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 have advised 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 is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY M80456, to reflect the proper tariff classification of the merchandise under heading 5903, HTSUS, specifically in subheading 5903.20.2500, HTSUSA, which provides for, *inter alia*: "[t]extile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: With polyurethane: Of man-made fibers: Other: Other," pursuant to the analysis set forth in HQ W968381 (Attachment). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revok-

ing any treatment previously accorded by it to substantially identical transactions.

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

DATED: November 20, 2007

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ W968381
November 20, 2007
CLA–2 OT:RR:CTF:TCM W968381 ADK
CATEGORY: Classification
TARIFF NO.: 5903.20.2500

MR. RANDY RUCKER
DRINKER BIDDLE GARDNER CARTON
191 N. Wacker Drive
Suite 3700
Chicago, Illinois 60606

RE: Tariff classification of two coated textile fabrics; Modification of New York Ruling M80456, dated March 7, 2007

DEAR MR. RUCKER:

This letter is in response to your request of July 20, 2006, on behalf of your client Synthetic Resources, Inc. (Synthetic Resources) for reconsideration of New York Ruling Letter (NY) M80456, dated March 7, 2006. In that ruling, United States Customs and Border Protection (CBP) determined that the two woven fabrics at issue were classifiable under heading 5407, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed NY M80456 and find it to be in error.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification was published on July 5, 2007, in the Customs Bulletin, Volume 41, No. 28. No comments were received in response to this notice.

FACTS:

The first item, style 4005036AU, consists of a plain woven fabric (400D x 400D/50 x 36), which is dyed black and is composed of 100% non-textured nylon man-made fibers. This material has been coated on one side with a clear polyurethane plastic coating. Synthetic Resources provided the following weight specifications for this material:

Wt. Of Fabric:	140 g/m^2	(89%)
Wt. Of PU:	18 g/m^2	(11%)
Total Wt.:	158 g/m^2	(100%)

The second item, style 4006038AU, consists of a 100% nylon, plain weave fabric (400D x 400D/60 x 38), which is dyed black. This material has been coated on one side with a clear polyurethane plastic coating. Synthetic Resources provided the following weight specifications for this material:

Wt. Of Fabric:	154 g/m^2	(79%)
Wt. Of PU:	41 g/m^2	(21%)
Total Wt.:	195 g/m^2	(100%)

In NY M80456, a third item, style 2006454AU, was also at issue. However, due to insufficient information, CBP did not rule on the classification of that fabric. Style 2006454AU is not under consideration in the present matter.

ISSUE:

What is the proper classification under the HTSUS for styles 4005036AU and 4006038AU?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. The HTSUS provisions under consideration are as follows:

5407 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:

5407.42.00 Dyed:

5407.42.0030 Weighing not more than 170 g/m^2 (620) . . . .

5407.42.0060 Weighing more than 170 g/m^2 (620) . . . .

* * *

5903 Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902:

5903.20 With polyurethane:

* * *

Of man-made fibers:

* * *

Other:

* * *

5903.20.2500 Other (229)

* * *

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. Note 2 to chapter 59, provides, in pertinent part:

> Heading 5903 applies to:
>
> (a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), **other than**:
>
> > (1) **Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye** . . . ; for the purpose of this provision, no account should be taken of any resulting change of color.
> >
> > (Emphasis added)
>
> * * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80. The EN to heading 5903 provides, in pertinent part:

> This heading covers textile fabrics which have been impregnated, coated, covered or laminated with plastics (e.g. poly(vinyl chloride)).
>
> Such products are classified here whatever their weight per m^2 and whatever the nature of the plastic component (compact or cellular), **provided**:
>
> (1) That, in the case of impregnated, coated or covered fabrics, the impregnation, coating or covering can be seen with the naked eye otherwise than by a resulting change in colour.
>
> (Emphasis in original)
>
> * * *

In NY M80456, CBP classified the subject fabrics in heading 5407, HTSUS, as "woven fabrics of synthetic filament yarn." In the request for reconsideration, Synthetic Resources argues that the fabrics are instead classifiable under heading 5903, HTSUS, as "textile fabrics impregnated, coated, covered or laminated with plastics."

It is undisputed that the subject fabrics have been coated with a polyurethane layer as required by heading 5903, HTSUS. At issue is whether this coating is visible to the naked eye as required by note 2 to chapter 59. In making such determinations, CBP may consider a number of factors, including:

(1) Whether the coating has visibly altered the surface of the fabric (Headquarters Ruling (HQ) 967884, dated October 26, 2005);
(2) Whether the plastic is visible in the interstices of the fabric (See HQ 961172, dated August 6, 1998);
(3) Whether the thread or weave is blurred or obscured, (HQ 089772, September 11, 1991); and
(4) Whether the surface of the fabric is leveled or smoothed and whether the coating itself creates a distinct visible pattern (Id.).

These factors are not exclusive and none is dispositive. See HQ W968300, dated February 8, 2007.

In NY M80456, CBP determined that the fabrics at issue were not visible to the naked eye and were therefore excluded from classification in heading 5903, HTSUS. We now find that determination to be in error. A visual inspection of these fabrics shows that the polyurethane has altered the surface of the fabric by obscuring the thread or weave. The coated surface of the fabric is smoother than the uncoated surface. In addition, the coating is visible in the interstices of the fabric. According to the criteria enumerated by CBP administrative precedent, the subject fabrics, style numbers 4005036AU and 4006038AU, feature a coating which is visible to the naked eye. They are therefore classifiable as coated textile fabrics under heading 5903, HTSUS.

HOLDING:

By application of GRI 1 and Note 2 to chapter 59, style numbers 4005036AU and 4006038AU are classifiable under heading 5903, HTSUS. Specifically, they are classifiable under subheading 5903.20.2500, HTSUSA, which provides for "[t]extile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: With polyurethane: Of man-made fibers: Other: Other." The 2007 general, column one rate of duty is 7.5 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY M80456, dated March 7, 2006, is hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.