

U.S. Customs Service

General Notices

NOTICE OF CANCELLATION OF CUSTOMS BROKER LICENSE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license is canceled with prejudice.

| <i>Name</i> | <i>License #</i> | <i>Issuing Port</i> |
|---------------------------|------------------|---------------------|
| Ronald D. Stribling | 03746 | Portland, Oregon |

Dated: November 4, 2002.

JAYSON P. AHERN,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, November 12, 2002 (67 FR 68724)]

ANNUAL USER FEE FOR CUSTOMS BROKER PERMIT AND NATIONAL PERMIT: GENERAL NOTICE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of due date for Customs broker user fee.

SUMMARY: This is to advise Customs brokers that the annual fee of \$125 that is assessed for each permit held by a broker whether it may be an individual, partnership, association or corporation, is due by January 21, 2003. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for payment of fee: January 21, 2003.

FOR FURTHER INFORMATION CONTACT: Scott J. Nielsen, Broker Management, (202) 927-0380.

SUPPLEMENTARY INFORMATION: Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub.L. 99-272) established that an annual user fee of \$125 is to be assessed for each Customs broker permit and National permit held by an individual, partnership, association or corporation. This fee is set forth in the Customs Regulations in section 111.96 (19 CFR 111.96).

Customs Regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which will be published in the Federal Register annually. Broker districts are defined in the General Notice published in the Federal Register, Volume 60, No, 187, September 27, 1995.

Section 1893 of the Tax reform Act of 1986 (Pub.L. 99-514) provides that notices of the date on which the payment is due for each broker permit shall be published by the Secretary of the Treasury in the Federal Register by no later than 60 days before such due date.

This document notifies brokers that for 2003, the due date of the user fee is January 21, 2003. It is expected that the annual user fees for brokers for subsequent years will be due on or about the twentieth of January of each year.

Dated: November 1, 2002.

JAYSON P. AHERN,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, November 12, 2002 (67 FR 68724)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, November 13, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

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

**MODIFICATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO THE TARIFF CLASSIFICATION
OF FISH OIL PRODUCTS REFERRED TO AS EPAX 3000 TG AND
EPAX 0525 TG**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letter and revocation of treatment relating to the classification of fish oil products referred to as EPAX 3000 TG and EPAX 0525 TG.

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 modifying a ruling concerning the tariff classification of fish oil products referred to as EPAX 3000 TG and EPAX 0525 TG, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocations was published on October 2, 2002, in Volume 36, Number 40, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after January 27, 2003.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 572-8784.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), Customs published a notice in the October 2, 2002, CUSTOMS BULLETIN, Volume 36, Number 40, proposing to modify New York Ruling Letter (NY) E81911, dated September 30, 1999, and to revoke any treatment accorded to substantially identical merchandise. No comments were received in response to this notice.

In NY E81911, Customs ruled that EPAX 3000 TG and EPAX 0525 TG were classified in subheading 3824.90.40, HTSUS, the provision for “[p]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: [o]ther: [o]ther: [f]atty substances of animal or vegetable origin and mixtures thereof.”

It is now Customs position that EPAX 3000 TG and EPAX 0525 TG were not correctly classified in NY E81911 because these substances are specifically described by subheading 1517.90.20, HTSUS, as “[m]argarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading 1516: [o]ther: [a]rtificial mixtures of two or more of the products provided for in headings 1501 to 1515, inclusive: [o]ther.”

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, have been 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 involving the same or similar merchandise, or the importer’s or Customs

previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's 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.

Customs, pursuant to section 625(c)(1), is modifying NY E81911 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 965784 set forth as an attachment to this notice. Additionally, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

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

Dated: November 7, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, November 7, 2002.

CLA-2 RR:CR:GC 965784 AM
Category: Classification
Tariff No. 1517.90.20

MR. RICARDO V. AGUIRRE, JR.
A. BURGHART SHIPPING CO., INC.
*Hemisphere Center
Newark, NJ 07114*

Re: Modification of NY E81911; EPAX 3000 TG and EPAX 0525 TG.

DEAR MR. AGUIRRE:

This is regarding New York Ruling Letter (NY) E81911, issued to you on September 30, 1999, on behalf of Pharmline Inc., regarding classification of EPAX 3000 TG and EPAX 0525 TG and other fish oil products, under the Harmonized Tariff Schedule of the United States (HTSUS).

Due to processing differences of EPAX 3000 TG and EPAX 0525 TG from the other fish oils discussed in NY E81911, we now believe that EPAX 3000 TG and EPAX 0525 TG are correctly classified in heading 1517, HTSUS, as "edible mixtures of animal oils."

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 Agree-

ment Implementation Act, (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed modification of NY E81911 was published on October 2, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 40. No comments were received in response to this notice.

Facts:

The merchandise, EPAX 3000 TG and EPAX 0525 TG, are mixtures of triglyceride esters of saturated and unsaturated fatty acids that are obtained from a mixture of fish oils by refining, winterizing, bleaching, and deodorizing. Both products have the CAS registry number 8016–13–5.

In NY E81911, Customs classified the subject merchandise along with the other fish oils in subheading 3824.90.40, HTSUS, the provision for “[p]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: [o]ther: [o]ther: [f]atty substances of animal or vegetable origin and mixtures thereof.”

Issue:

What is the classification of EPAX 3000 TG and EPAX 0525 TG?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

- 1517 Margarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter; other than edible fats or oils or their fractions of heading 1516:
- 3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

General EN(1)(A) to Chapter 15 states that the chapter covers “[a]nimal or vegetable fats and oils, whether crude, purified or refined or treated in certain ways (e.g., boiled, sulphurised or hydrogenated).” The General ENs to Chapter 15 go on to define “animal or vegetable fats and oils” as “esters of glycerol with fatty acids (such as palmitic, stearic and oleic acids).” Furthermore, “* * * vegetable or animal fats and oils and their fractions are classified in this Chapter whether used as foodstuffs or for technical or industrial purposes (e.g., the manufacture of soap, candles, lubricants, varnishes or paints).” The General ENs to the chapter also state that “[t]hese headings cover crude fats and oils and their fractions, as well as those which have been **refined** or purified, e.g., by clarifying, washing, filtering, **decolourising**, deacidifying or **deodorising**.” Lastly, the ENs state that the main methods used for fractionation include **winterisation** (emphasis added).

If the product can be described by the terms of heading 1517, HTSUS, it cannot be classified in heading 3824, HTSUS, the provision for chemical products not elsewhere specified or included. The instant merchandise is triglycerides, obtained from a mixture of fish oils, which have been refined, winterized, bleached (decolorized) and deodorized. Fish oil is oil of an animal. Tryglycerides are esters of glycerol specified in the ENs as an animal fat and oil. All of the processes to which the fish oils have been subjected are specifically mentioned in the ENs as acceptable processing for oils of Chapter 15, HTSUS. Therefore, the merchandise is specifically described by the terms of heading 1517, HTSUS, and cannot be classified in heading 3824, HTSUS. Moreover, NY H87794, dated June 4, 2002, classifies a similar product containing triglycerides of fish oils that, as in the instant product, have not been chemically modified, in heading 1517, HTSUS. See also HQ 964015, dated January 31, 2002, HQ 964014, dated February 8, 2002, HQ 964593, dated February 13, 2002,

HQ 964558, dated February 15, 2002, HQ 964804, dated February 19, 2002, and HQ 964558, dated February 15, 2002, wherein encapsulated fish oil mixtures containing triglycerides not chemically modified were classified in heading 1517, HTSUS.

Holding:

EPAX 3000 TG and EPAX 0525 TG are classified in subheading 1517.90.20, HTSUS, which provides for “[m]argarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading 1516: [o]ther: [a]rtificial mixtures of two or more of the products provided for in headings 1501 to 1515, inclusive: [o]ther.”

Effect on Other Rulings:

NY E81911 is modified with the respect to the classification of EPAX 3000 TG and EPAX 0525 TG in accordance with this ruling.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

**MODIFICATION AND REVOCATION OF RULING LETTERS AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
STERILE AND NON-STERILE SUTURE ATTACHED TO A
NEEDLE**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification and revocation of ruling letters and treatment relating to the classification of sterile and non-sterile suture attached to a needle.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying one and revoking three rulings pertaining to the tariff classification of sterile and non-sterile suture attached to a needle under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocations was published on October 2, 2002, in Volume 36, Number 40, of the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after January 27, 2003.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), Customs published a notice in the October 2, 2002, CUSTOMS BULLETIN, Volume 36, Number 40, proposing to modify Headquarters Ruling (HQ) 560914, dated October 22, 1998, and to revoke New York Ruling (NY) H80134, dated April 26, 2001, NY 869236, dated December 17, 1991 and HQ 089373, dated October 25, 1991 and to revoke any treatment accorded to substantially identical merchandise. No comments were received in response to this notice.

In NY H80134, NY 869236, and HQ 089373, Customs ruled that non-sterile suture attached to needles was classified in subheadings 4206 and 5609 according to the nature of the thread. Additionally, in HQ 089373, Customs held that sterile suture attached to a needle is classified in subheading 3006.10.00, HTSUS, the provision for “[p]harmaceutical goods specified in note 4 to this chapter: [s]terile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental hemostatics.” Lastly, in HQ 560914, Customs states that classification of the merchandise in heading 5609, HTSUS, does not preclude duty free treatment under U.S. Note 2(b), subchapter II, Chapter 98, HTSUS.

It is now Customs position that non-sterile suture material attached to a needle is not classified in headings 4602 and 5609, HTSUS, according to the nature of the thread. Neither is it Customs position that sterile suture material attached to a needle is classified in heading 3006, HTSUS. To be classifiable in heading 3006, HTSUS, suture must be sterile catgut or similar suture material. Suture material attached to a needle is not described by the terms of the heading. Furthermore, non-sterile suture attached to a needle is a composite good classifiable at GRI

3(c) in subheading 9018.90.80, HTSUS, as “[I]nstruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: [O]ther instruments and appliances and parts and accessories thereof: [O]ther.”

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, have been 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 involving the same or similar merchandise, or the importer’s or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer’s 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.

Customs, pursuant to section 625(c)(1), is modifying HQ 560914 and revoking NY H80134, NY 869236 and HQ 089373 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQs 965318, 965845, 965846 and 965847 set forth as attachments A, B, C and D to this notice. Additionally, pursuant to section 625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

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

Dated: November 7, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 7, 2002.
CLA-2 RR:CR:GC 965318AM
Category: Classification
Tariff No. 9018.90.80

MR. JASON M. WAITE
ALSTON & BIRD LLP
601 Pennsylvania Avenue, N.W.
North Building, 10th Floor
Washington, DC 20004-2601

Re: NY H80134 revoked; non-sterile suture attached to a suture needle in a cardboard wrapper.

DEAR MR. WAITE:

This is in reference to your letter of April 18, 2002, on behalf of Surgical Specialties, requesting reconsideration of New York Ruling (NY) H80134, dated April 26, 2001, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of non-sterile suture attached to a suture needle in a cardboard wrapper. We have also considered arguments you made in a telephone conference on July 31, 2002. In NY H80134, we determined that these goods were classifiable according to the material of the suture, headings 4206 and 5609, HTSUS, the provisions for "articles of catgut" and "articles of yarn, strip or the like * * *" respectively.

In your letter, you request reconsideration of the classification of the merchandise and further clarification of the eligibility of the merchandise for duty free treatment and marking issues. We have determined that NY H80134 must be revoked. In addition, Headquarters Ruling (HQ) 560914, dated October 22, 1998, NY 869236, dated December 17, 1991 and HQ 089373, dated October 25, 1991, are modified or revoked in HQs 965847, 965846 and 965845 of this date.

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 H80134 was published on October 2, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 40. No comments were received in response to this notice.

Facts:

As stated in NY H80134, the subject merchandise consists of the following components and packaging materials which will be exported from the United States to three assembly operations, one each in Mexico, China, and the Dominican Republic: surgical needles (channeled); surgical needles (drilled end); black braided silk suture; black mono nylon suture; catgut suture (plain and chromatic); polypropylene suture; wrapping cards composed of various packaging materials. The silk yarn is extruded in China; the nylon yarn is extruded in the United Kingdom; the catgut is produced in Brazil; and the polypropylene yarn is extruded in the United States. To assemble the needled suture for importation into the United States, one piece of yarn or catgut is attached to a needle and the completed item is enclosed in a wrapping card.

Counsel claims that the instant merchandise is described by subheading 9018.32.00, the provision for "[I]nstruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Tubular metal needles and needles for sutures and parts and accessories thereof."

Issues:

1. Whether non-sterile suture attached to a needle is classifiable as a medical instrument or according to the material of the suture?
2. What is the country of origin of the merchandise?

Law and Analysis:

Classification

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and,

in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

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

GRI 2(b) requires that goods consisting of different materials be classified according to the principles of GRI 3. GRI 3(a) requires that amongst competing headings, the most specific heading be used, but headings which refer to part only of the goods are equally specific. GRI 3(b), provides that composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. Explanatory Note 3(b)(VIII) to GRI 3(b) states that essential character may be determined by “the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.” GRI 3(c) requires that if the essential character can not be determined, the good is classified in the latter heading.

The following headings and subheadings are relevant to the classification of this product:

| | |
|------------|---|
| 4206 | Articles of gut (other than silkworm gut), of goldbeater’s skin, of bladders or of tendons: |
| * | * * * * * |
| 5609 | Articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included: |
| * | * * * * * |
| 9018 | Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: |
| | Syringes, needles, catheters, cannulae and the like; parts and accessories thereof. |
| 9018.32.00 | Tubular metal needles and needles for sutures and parts and accessories thereof |
| 9018.90 | Other instruments and appliances and parts and accessories thereof: |
| 9018.90.80 | Other |

EN 90.18(I)(A), lists needles under “[I]nstruments which may be used under the same names for several purposes (e.g., needles, lancets, trocars, surgical knives and scalpels of all kinds, sounds, specula, mirrors and reflectors, scissors, shears, forceps, pliers, chisels, gouges, mallets, hammers, saws, scrapers, spatulae, cannulae, catheters, suction tubes, etc., cauteries, tweezers, dressing, swab, sponge or needle holders, retractors, dilators, clips, syringes of all kinds).”

The instant merchandise consists of two different materials *prima facie* classified in two different provisions: the needle of heading 9018, HTSUS, and the thread of headings 4206 and 5609, HTSUS. Neither heading can be considered more specific as they both describe the good in part. A cost breakdown submitted by requestor shows that the needle constitutes the item with the most value. Also, the needle contributes more of the weight of the item.

However, the role of the suture material to the item as a whole outweighs the role of the needle. The *raison d’etre* of the merchandise is to keep a wound closed. The thread is the portion of the merchandise that holds the wound together; the needle is simply the vehicle for placing the thread where it needs to go. Furthermore, the trade recognizes that the role of the suture is paramount. For instance, completed sterilized suture and needle is listed in the 2001 Medical Device Register, Medical Economics, Inc., under “Sutures.” The listings include “monofilament suture with needle of same diameter as suture and non-ab-

sorbable, synthetic, polyamide suture in 8 sizes with full range of needle types.” The listing for “Needles-Suture” describes only disposable and re-usable suture needles. ‘Commercially, the completed and sterilized item is known as a suture. Some sutures are packaged attached to a needle and some are not. Each component of the instant merchandise appears to be equally “essential” under GRI 3(b). Hence, the merchandise is classifiable in heading 9018, HTSUS under GRI 3(c).

At GRI 6, the issue remains whether the suture material can be regarded as a part or accessory of the needle, or whether the entire article is an “other” medical instrument. An article may be classified as a part of another article when, in its imported condition, it has been so far advanced so as to be dedicated to and commercially fit for use with that article and incapable of being made into more than one article or class of articles. See *Avin Industrial Products Co. v. United States*, 72 Cust. Ct. 43, C.D. 4503, 376 F. Supp. 879, reh. denied, 72 Cust. Ct. 147, C.D. 4522 (1974). See also *Haraeus-Amersil, Inc. v. United States*, 640 F. Supp. 1331 (CIT 1986) (so advanced that nothing remained to be done except cut precious metal contact tape apart); *EM Chemicals v. United States*, 728 F. Supp. 723 (CIT 1989) (liquid crystal used in liquid crystal displays imported in advanced manufactured state such that the product as imported is ready to be a part of the LCD by being sandwiched between two ‘plates’). The term “accessory” is not defined in either the tariff schedule or the Explanatory Notes. An accessory is generally an article which is not necessary to enable the goods with which it is used to fulfill their intended function. HQ 087704, September 27, 1990.

The suture, as discussed above, can not be considered of secondary importance to the article as a whole. It therefore cannot be described as an accessory to the needle. Nor can it be described as part of the needle. The thread, although attached to the needle may or may not be used with it. It may be cut and used alone as a ligature, to tie off a blood vessel, or it may be used as ordinary thread. In fact, suture material is also sterilized and packaged without needles for a myriad of uses. Without the necessary “dedication to use” with a suture needle, the attached suture material may not be described as a part of the needle. Rather, the entire suture and needle is classified as an “other” medical instrument in subheading 9018.90.80.

Country of Origin

With regard to the sutures that are assembled in Mexico, the NAFTA Marking Rules (19 CFR Part 102) are applicable. Section 102.11, Customs Regulations (19 CFR 102.11), sets forth the required hierarchy for determining whether a good is a good of a NAFTA country for the purposes of country of origin marking and determining the rate of duty and staging category applicable to a NAFTA originating good as set out in Annex 302.2. Paragraph (a) of this section states that the country of origin of a good is the country in which:

- (1) The good is wholly obtained or produced;
- (2) The good is produced exclusively from domestic materials; or
- (3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

“Foreign material” is defined in 19 CFR 102.1(e) as “a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced.” Sections 102.11(a)(1) and 102.11(a)(2) do not apply to the facts presented in this case because the suture is not processed solely in Mexico and therefore the imported article is neither wholly obtained or produced, nor produced exclusively from domestic materials. Since an analysis of sections 102.11(a)(1) and 102.11(a)(2) will not yield a country of origin determination, we look to section 102.11(a)(3).

Section 102.11(a)(3) provides that the country of origin is the country in which “each foreign material incorporated in that good undergoes an applicable change in tariff classification as set forth in 19 CFR 102.20. * * *”

The applicable tariff shift rule found in section 102.20(q) provides as follows:

| HTSUS | Tariff Shift and/or other requirements |
|---------|---|
| 9018.90 | A change to subheading 9018.90 from any other subheading, except from subheading 9001.90 or synthetic rubber classified in heading 4002 when resulting from a simple assembly; or A change to defibrillators from printed circuit assemblies, except when resulting from a simple assembly |

In the instant case, the Mexican assembly operation results in a change to subheading 9018.90 from another subheading for both the U.S.-origin needle (subheading 9018.32) and the various threads used. Accordingly, the tariff shift rule is satisfied and the country of origin of the finished sutures assembled in Mexico for marking purposes is Mexico.

With regard to the assembly operations that occur in China and the Dominican Republic, the substantial transformation standard is applied to determine the country of origin. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), provides that; "country of origin" means the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin for marking purposes."

A substantial transformation occurs when a new and different article of commerce emerges from a process with a new name, character or use different from that possessed by the article prior to processing. *United States v. Gibson-Thomsen Co., Inc.*, 27 CCPA 267, C.A.D. 98 (1940).

Customs ruled in Headquarters Ruling Letter ("HRL") 730999, dated December 12, 1988, that imported surgical needles attached to thread in the U.S. and thereby made into sutures suitable for use in cardiovascular surgery were substantially transformed in the U.S. See also HRL 561167, dated December 14, 1998, and HRL 554957, dated March 7, 1990. Based on this analysis, the assembly operations involved in this case would result in a substantial transformation and the country of assembly, either China or the Dominican Republic, would be the country of origin for marking purposes.

Holding:

Non-sterile suture material attached to a needle will be classified in subheading 9018.90.80, HTSUS, as "[I]nstruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: [O]ther instruments and appliances and parts and accessories thereof: [O]ther." The country of origin for marking purposes of the non-sterile suture material attached to a needle assembled in Mexico is Mexico. The country of origin for marking purposes of the non-sterile suture material attached to a needle assembled in China or the Dominican Republic is those respective countries for marking purposes.

Effect on Other Rulings:

NY H80139 is revoked.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 7, 2002.

CLA-2 RR:CR:GC 965845 AM
Category: Classification
Tariff No. 9018.90.80

MR. PETER J. FITCH
FITCH, KING AND CAFFENTZIS
35 Beach Road
Monmouth Beach, NJ 07750

Re: HQ 089373 revoked: sterile and non-sterile sutures with or without needles.

DEAR MR. FITCH:

This is in reference to Headquarters Ruling Letter (HQ) 089373, issued to you on October 25, 2002, on behalf of Davis & Geck, a Division of American Cyanamid Company, con-

cerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of sterile and non-sterile sutures with or without needles. In HQ 089373, we determined that: sterile needled sutures are classified under subheading 3006.10.00, HTSUS, the provision for Pharmaceutical goods specified in note 4 to this chapter: Sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental hemostatics.” Non-sterile suture material of catgut with and without needles is classified under subheading 4206.10.30, HTSUS, the provision for Articles of gut (other than silkworm gut), of goldbeater’s skin, of bladders or of tendons: Of catgut: If imported for use in the manufacture of sterile surgical sutures.” Other non-sterile suture material with and without needles is classified according to the type of material used in the suture in heading 5609, HTSUS, the provisions for “articles of yarn, strip or the like * * *.”

In the process of reviewing a similar matter, we have determined that HQ 089373 must be revoked. In addition, New York Ruling (NY) H80134 dated April 26, 2001, HQ 560914, dated October 22, 1998, NY 869236, dated December 17, 1991 are revoked in HQs 965318, 965847 and 965846 of this date.

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 that HQ 089373 was published on October 2, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 40. No comments were received in response to this notice.

Facts:

As stated in HQ 089373, the subject merchandise consists of sterile and non-sterile sutures with and without needles. The Trade and Tariff Act of 1984 (PL. 98-573) replaced item 792.22, of the Tariff Schedules of the United States (TSUS), the provision for articles of gut, with two new items. Item 792.24 provided the same preferential duty rate for “articles of gut imported for use in the manufacture of surgical sutures” as that accorded to item 495.10, TSUS, the provision for sterile surgical sutures and materials. New item 792.26, TSUS, provides for “other articles of gut.” In so doing, the House of Representatives Ways and Means Committee used the following language in recommending the bill:

When used in the manufacture of sutures, the gut is cut to the appropriate length and a needle is added, resulting in a nonsterile suture, classified in item 792.22 [“articles of gut”]. If sterilized and sterile-packed in inner and outer packages prior to importation, the suture would be classified in item 495.10 [“articles of gut imported for use in the manufacture of surgical sutures”]. House Report No. 98-1015, to accompany H.R. 6064, Sept. 18, 1984.

Specifically disregarding the legislative history cited above, HQ 082498, dated March 14, 1989, held that a sterile needle with suture attached was classified in item 709.27, TSUS, the provision for medical instruments. HQ 087660, dated November 5, 1990, modified HQ 082498, in accordance with the legislative history, classifying sterile needles with suture attached in item 495.10, the provision for surgical sutures, and non-sterile suture with a needle attached in item 792.24, TSUS, the provision for “articles * * * of gut, if imported for use in the manufacture of sterile surgical sutures.”

In 1988, the HTSUS was adopted. However, rulings on the instant matter continued to discuss the legislative history of the Tariff Act of 1984. For instance, HQ 089373, dated October 25, 1991, cited the sentence above that “[W]hen used in the manufacture of sutures, the gut is cut to the appropriate length and a needle is added, resulting in a non-sterile suture, * * *.” There, Customs ruled that sterile needled sutures are classified in subheading 3006.10.00, HTSUS as “sterile suture material” and non-sterile needled sutures are classified according to the material of the suture thread, such as in subheading 4206.10.30, HTSUS, for “articles of gut.”

Issue:

Whether non-sterile suture attached to a needle is classifiable as a medical instrument or according to the material of the suture?

Law and Analysis:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 2(b) requires that goods consisting of different materials be classified according to the principles of GRI 3. GRI 3(a) requires that amongst competing headings, the most specific heading be used, but headings which refer to part only of the goods are equally specific. GRI 3(b), provides that composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character; insofar as this criterion is applicable. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

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

The EN to GRI 1 part (V) explains that the expression “provided such headings or Notes do not otherwise require” makes it clear that “the terms of the headings and any relative Section or Chapter Notes are paramount, i.e., they are the first consideration in determining classification. For example, in Chapter 31, the Notes provide that certain headings relate only to particular goods. Consequently those headings cannot be extended to include goods which otherwise might fall there by reason of the operation of Rule 2 (b).” Explanatory Note 3(b)(VIII) to GRI 3(b) states that essential character may be determined by “the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.” GRI 3(c) requires that if the essential character can not be determined, the good is classified in the latter heading.

The following headings and subheadings are relevant to the classification of this merchandise:

| | |
|------------|---|
| 3006 | Pharmaceutical goods specified in note 4 to this chapter: |
| 3006.10.00 | Sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental hemostatics |
| * | * * * * * |
| 4206 | Articles of gut (other than silkworm gut), of goldbeater’s skin, of bladders or of tendons: |
| * | * * * * * |
| 5609 | Articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included: |
| * | * * * * * |
| 9018 | Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: |
| 9018.90 | Other instruments and appliances and parts and accessories thereof: |
| 9018.90.80 | Other |

Note 4 to Chapter 30, HTSUS, specifies, *inter alia*: “[S]terile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure * * *.” EN 30.06 states, in pertinent part, “This item covers all kinds of ligatures for surgical sutures, provided they are sterile. * * *” The materials used for such ligatures include catgut, natural fibers, synthetic fibers and metals.

Subheading 3006.10.00, HTSUS specifies “Sterile surgical catgut” and “similar sterile suture materials.” Item 495.10, TSUS, was the provision for “articles of gut imported for use in the manufacture of surgical sutures”. HQ 087660, which classified sterile needles with suture attached in item 495.10, TSUS, interpreted the phrase “articles of gut” to include the suture material with a needle.

In an attempt to follow the history of classifying sterile suture and needle in the provision for suture material, HQ 089373 ruled that sterile suture and needle is classified in subheading 3006.10.00, HTSUS, the provision for “sterile suture materials.” There, we

stated “[B]ased on the legislative history and above cited definitions, we are of the opinion that “suture material” is suturing material such as catgut, synthetic polymer fibres, metal, etc. and an attached needle.” This statement is incorrect. The terms “similar suture material” can not be twisted to refer to anything but materials, ie. catgut, synthetic polymer fibres, metal, etc. The sterile needle combination can not be classified in heading 3006, HTSUS, by the terms of the heading itself. EN 30.06, which defines the scope of the heading as covering all kinds of “ligatures for surgical sutures,” supports this view. Ligatures are “any substance, such as catgut, cotton, silk, or wire, used to tie a vessel or strangulate a part.” *Dorland’s Illustrated Medical Dictionary*, 27th Edition, p. 935. Furthermore, the EN to GRI 1 warns against expanding a heading clearly limited in this manner. Here, the heading is clearly limited, by its terms and by Chapter note 4, to sterile suture material. It does not include needled sutures because needles are not “suture materials” in the way that gut is suture material.

EN 90.18(I)(A), lists needles under “[I]nstruments which may be used under the same names for several purposes (e.g., needles, lancets, trocars, surgical knives and scalpels of all kinds, sounds, specula, mirrors and reflectors, scissors, shears, forceps, pliers, chisels, gouges, mallets, hammers, saws, scrapers, spatulae, cannulae, catheters, suction tubes, etc., cauteries, tweezers, dressing, swab, sponge or needle holders, retractors, dilators, clips, syringes of all kinds).”

Sterile and non-sterile needled sutures consist of two different materials *prima facie* classified in three different provisions: the needle of heading 9018, HTSUS, and the thread of headings 3006, 4206 and 5609, HTSUS. Neither heading can be considered more specific as they both describe the good in part. The needle may have greater value and weight than the thread.

However, the role of the suture material to the item as a whole outweighs the role of the needle. The *raison d’être* of the merchandise is to keep a wound closed. The thread is the portion of the merchandise that holds the wound together; the needle is simply the vehicle for placing the thread where it needs to go. Furthermore, the trade recognizes that the role of the suture is paramount. For instance, completed sterilized suture and needle is listed in the 2001 Medical Device Register, Medical Economics, Inc., under “Sutures.” The listings include “monofilament suture with needle of same diameter as suture and non-absorbable, synthetic, polyamide suture in 8 sizes with full range of needle types.” The listing for “Needles-Suture” describes only disposable and re-usable suture needles. Commercially, the completed and sterilized item is known as a suture. Some sutures are packaged attached to a needle and some are not. Each component of the instant merchandise appears to be equally “essential” under GRI 3(b). Hence, the merchandise is classifiable in heading 9018, HTSUS under GRI 3(c).

Holding:

Sterile and non-sterile suture material attached to a needle will be classified in subheading 9018.90.80, HTSUS, as “[I]nstruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: [O]ther instruments and appliances and parts and accessories thereof: [O]ther.” Sterile suture material continues to be classified in subheading 3006.10.00, HTSUS, and non-sterile suture materials continue to be classified according to the nature of the material.

Effect on Other Rulings:

HQ 089373 is revoked.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 7, 2002.
CLA-2 RR:CR:GC 965846 AM
Category: Classification
Tariff No. 9018.90.80

Ms. BETTY MAYLOR
IMPORT CUSTOMS MANAGER
LEP PROFIT INTERNATIONAL, INC.
440 McClellan Highway
East Boston, MA 02128

Re: NY 869236 Revoked; non-sterile suture attached to a suture needle.

DEAR Ms. MAYLOR:

This is in reference New York Ruling Letter (NY) 869236, issued to you on December 17, 1991, on behalf of Deknata Division, Pfizer Hospital Products Group, Inc., concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of non absorbable polypropylene surgical suture attached to a suture needle wound around a foam carrier and sealed in a blister pack. In NY 869236, we determined that these goods were classifiable according to the material of the suture, in subheading 5609.00.30, HTSUS, the provision for "articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included: Of man-made fibers."

In the process of reviewing a similar matter, we have determined that NY 869236 must be revoked. We have also reviewed NY H80134, dated April 26, 2001, Headquarters Ruling (HQ) 560914, dated October 22, 1998 and HQ 089373, dated October 25, 1991. Those rulings are revoked or modified in HQs 965318, 965847 and 965845 of this date.

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 869236 was published on October 2, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 40. No comments were received in response to this notice.

Facts:

As stated in NY 869236, the subject merchandise consists of non-absorbable polypropylene surgical suture composed of textile monofilament attached to two surgical needles constructed of stainless steel wound around a foam carrier and sealed in a blister pack.

Issue:

Whether unsterile suture attached to a needle is classifiable as a medical instrument or according to the material of the suture?

Law and Analysis:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

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

GRI 2(b) requires that goods consisting of different materials be classified according to the principles of GRI 3. GRI 3(a) requires that amongst competing headings, the most specific heading be used, but headings which refer to part only of the goods are equally speci-

fic. GRI 3(b), provides that composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. Explanatory Note 3(b)(VIII) to GRI 3(b) states that essential character may be determined by “the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.” GRI 3(c) requires that if the essential character can not be determined, the good is classified in the latter heading.

The following headings and subheadings are relevant to the classification of this product:

| | |
|------|---|
| 5609 | Articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included: |
| * | * * * * * |
| 9018 | Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: |

EN 90.18(I)(A), lists needles under “[I]nstruments which may be used under the same names for several purposes (e.g., needles, lancets, trocars, surgical knives and scalpels of all kinds, sounds, specula, mirrors and reflectors, scissors, shears, forceps, pliers, chisels, gouges, mallets, hammers, saws, scrapers, spatulae, cannulae, catheters, suction tubes, etc., cauteries, tweezers, dressing, swab, sponge or needle holders, retractors, dilators, clips, syringes of all kinds).”

The instant merchandise consists of two different materials *prima facie* classified in two different provisions: the needle of heading 9018, HTSUS, and the thread of heading 5609, HTSUS. Neither heading can be considered more specific as they both describe the good in part. The needle may constitute the item with the most value and greatest weight of the combined suture.

However, the role of the suture material in relation to the item as a whole outweighs the role of the needle. The *raison d’être* of the merchandise is to keep a wound closed. The thread is the portion of the merchandise that holds the wound together; the needle is simply the vehicle for placing the thread where it needs to go. Furthermore, the trade recognizes that the role of the suture is paramount. For instance, completed sterilized suture and needle is listed in the 2001 Medical Device Register, Medical Economics, Inc., under “Sutures.” The listings include “monofilament suture with needle of same diameter as suture and non-absorbable, synthetic, polyamide suture in 8 sizes with full range of needle types.” The listing for “Needles-Suture” describes only disposable and re-usable suture needles. Commercially, the completed and sterilized item is known as a suture. Some sutures are packaged attached to a needle and some are not. Each component of the instant merchandise appears to be equally “essential” under GRI 3(b). Hence, the merchandise is classifiable in heading 9018, HTSUS under GRI 3(c). Specifically, the entire suture and needle is classified as an “other” medical instrument in subheading 9018.90.80.

Holding:

Non-sterile suture material attached to a needle will be classified in subheading 9018.90.80, HTSUS, as “[I]nstruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: [O]ther instruments and appliances and parts and accessories thereof: [O]ther.”

Effect on Other Rulings:

NY 869236 is revoked.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 7, 2002.
CLA-2 RR:CR:GC 965847 AM
Category: Classification
Tariff No. 9018.90.80

PORT DIRECTOR
U.S. CUSTOMS SERVICE
#1 La Puntilla
San Juan, PR 00901

Re: HQ 560914 modified; non-sterile suture attached to a suture needle.

DEAR PORT DIRECTOR:

This is in reference Headquarters ruling (HQ) 560914, dated October 22, 1998, responding to a request for Internal Advice (I.A. 32/97), on behalf of Davis & Gech, Inc. and U.S. Surgical Corporation, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of non-sterile suture attached to a suture needle. In HQ 560914, we determined that these goods were eligible for duty free treatment under U.S. Note 2(b), subchapter II, Chapter 98, HTSUS, provided all the components and materials thereof are of U.S. origin and the materials are exported directly from the U.S. to the B.C. and the assembled goods were imported directly to the U.S. from the B.C. This decision was based on classification in subheading 5609.00.40, HTSUS, which provides for “[a]rticles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included: [o]ther.”

In reviewing like merchandise in another matter, we have determined that HQ 560914 must be modified to reflect the correct classification of the merchandise irrespective of the duty determination. In addition, New York Ruling (NY) H80134, dated April 26, 2001, NY 869236, dated December 17, 1991 and HQ 089373, dated October 25, 1991, are modified in HQs 965318, 965846 and 965845 of this date.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed modification of HQ 560914 was published on October 2, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 40. No comments were received in response to this notice.

Facts:

As stated in HQ 560914, the subject merchandise consists of silk and man-made yarns and needles of U.S. or foreign origin. The different type of yarns used include: catgut; man-made absorbable gut; nylon dacron and silk. The yarns are cut to length and dressed in Puerto Rico and sent to the Dominican Republic for assembly with the needles (by threading) and retail packaging. The assembled sutures and needles are returned non-sterilized.

Issue:

Whether unsterile suture attached to a needle is classifiable as a medical instrument or according to the material of the suture?

Law and Analysis:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally in-

dicative of the proper interpretation of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

GRI 2(b) requires that goods consisting of different materials be classified according to the principles of GRI 3. GRI 3(a) requires that amongst competing headings, the most specific heading be used, but headings which refer to part only of the goods are equally specific. GRI 3(b), provides that composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. Explanatory Note 3(b)(VIII) to GRI 3(b) states that essential character may be determined by "the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods." GRI 3(c) requires that if the essential character can not be determined, the good is classified in the latter heading.

The following headings and subheadings are relevant to the classification of this product:

| | |
|------------|---|
| 4206 | Articles of gut (other than silkworm gut), of goldbeater's skin, of bladders or of tendons: |
| * | * * * * * |
| 5609 | Articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included: |
| * | * * * * * |
| 9018 | Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: |
| 9018.90 | Other instruments and appliances and parts and accessories thereof: |
| 9018.90.80 | Other |

EN 90.18(I)(A), lists needles under "[I]nstruments which may be used under the same names for several purposes (e.g., needles, lancets, trocars, surgical knives and scalpels of all kinds, sounds, specula, mirrors and reflectors, scissors, shears, forceps, pliers, chisels, gouges, mallets, hammers, saws, scrapers, spatulae, cannulae, catheters, suction tubes, etc., cauteries, tweezers, dressing, swab, sponge or needle holders, retractors, dilators, clips, syringes of all kinds)."

The instant merchandise consists of two different materials *prima facie* classified in two different provisions: the needle of heading 9018, HTSUS, and the thread of headings 4206 and 5609, HTSUS. Neither heading can be considered more specific as they both describe the good in part. The needle constitutes the item with the most value and weight.

However, the role of the suture material to the item as a whole outweighs the role of the needle. The *raison d'être* of the merchandise is to keep a wound closed. The thread is the portion of the merchandise that holds the wound together; the needle is simply the vehicle for placing the thread where it needs to go. Furthermore, the trade recognizes that the role of the suture is paramount. For instance, completed sterilized suture and needle is listed in the 2001 Medical Device Register, Medical Economics, Inc., under "Sutures." The listings include "monofilament suture with needle of same diameter as suture and non-absorbable, synthetic, polyamide suture in 8 sizes with full range of needle types." The listing for "Needles-Suture" describes only disposable and re-usable suture needles. Commercially, the completed and sterilized item is known as a suture. Some sutures are packaged attached to a needle and some are not. Each component of the instant merchandise appears to be equally "essential" under GRI 3(b). Hence, the merchandise is classifiable in heading 9018, HTSUS under GRI 3(c).

Holding:

Non-sterile suture material attached to a needle is classified in subheading 9018.90.80, HTSUS, as "[I]nstruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: [O]ther instruments and appliances and parts and accessories thereof: [O]ther." This is a duty free provision not subject to textile agreements. Further analysis of U.S. Note 2(b), subchapter II, Chapter 98, HTSUS is otherwise unchanged. Specifically, The imported sutures with needles are eligible for duty-free treatment under U.S. Note 2(b), subchapter II, Chapter 98, HTSUS, provided all the components and materials thereof are of U.S. origin and the materials were exported

directly from the U.S. to the B.C. and the assembled goods were imported directly to the U.S. from the B.C.

Effect on Other Rulings:

HQ 560914 is modified in accordance with this ruling on the classification of non-sterile suture attached to a needle.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

REVOCATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
MEN'S SHIRT-JACKET

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of a men's shirt-jacket.

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 letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a men's shirt-jacket. Customs is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published October 2, 2002, in the CUSTOMS BULLETIN, Vol. 36, 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 January 27, 2003.

FOR FURTHER INFORMATION CONTACT: Shari Suzuki, Textiles Branch, at (202) 572-8818.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility.**" These concepts

are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the October 2, 2002, CUSTOMS BULLETIN, Vol. 36, No. 40, proposing to revoke a ruling relating to the tariff classification of a men's shirt-jacket, and to revoke any treatment accorded to substantially identical transactions. The period to submit comments expired on November 2, 2002. No comments were received.

In New York Ruling Letter (NY) G87641, dated March 12, 2001, Customs classified a long-sleeved men's woven shirt-jacket, with an outer shell of 70 percent cotton and 30 percent nylon woven fabric and a body lined with 100 percent polyester fleece fabric, under subheading 6205.20.2065, HTSUSA, which provides for men's shirts. The garment has three jacket-type features (*i.e.*, full lining, pockets below the waist, and large front closure snaps), and possesses the overall bulk and appearance of a jacket.

It is now Customs determination that the proper classification for the men's shirt-jacket is subheading 6201.92.2051, HTSUSA, which provides for anoraks (including ski jackets), windbreakers and similar articles. Headquarters Ruling Letter (HQ) 965037 revoking NY G87641 is set forth in the Attachment to this document.

Although in this notice Customs is specifically referring to one ruling, this 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.*, 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.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY G87641, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965037, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

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

Dated: November 8, 2002.

CYNTHIA REESE,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 8, 2002.
CLA-2 RR:CR:TE 965037 SK
Category: Classification
Tariff No. 6201.92.2051

ELIZABETH M. CANTU
CUSTOMS ANALYST
J.C. PENNEY COMPANY, INC.
*P.O. Box 10001
Dallas, TX 75301-0001*

Re: Revocation of NY G87641 (March 12, 2001); classification of a men's garment; shirt v. jacket; Guidelines; garment must have 3 jacket features to be classifiable as such and if the result is not unreasonable; heading 6201, HTSUS.

DEAR MS. CANTU:

This is in regard to your letter dated May 11, 2001, requesting a reconsideration of New York Ruling Letter (NY) G87641, dated March 12, 2001, regarding the classification of a men's garment. After review of NY G87641, it has been determined that classification of the garment in subheading 6205.20.2065, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY G87641.

A sample was submitted to Customs for examination.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed ruling was published on October 2, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 40. No comments were received in response to the notice.

Facts:

The merchandise at issue is a men's woven shirt-jacket, identified as style number 2802B. The garment has long sleeves with vented cuffs secured with adjustable snap closures, a full front opening secured by 5 snap closures, a pointed shirt-type collar, two front breast pockets with flaps secured by hook and loop closures, side pockets at the waist, two side seam vents and a hemmed bottom. The shell of the garment is made of 70 percent cotton and 30 percent nylon woven fabric. The shirt body is lined with 100 percent polyester fleece fabric. The sleeves are lined with 100 percent nylon woven fabric.

Your original ruling request submitted to Customs prior to the issuance of NY G87641 stated that the garment's shell weight was 11.8 ounces per square yard and the weight of the fleece lining was 265 grams per square meter (approximately 9.35 ounces per square yard). These figures were used in NY G87641. In your request for a reconsideration of NY G87641, you again resubmitted these same fabric weights. Examination of the submitted sample, however, yields the finding that the shell weight is actually 5.4 ounces per square yard, and the fleece lining is approximately 4.2 ounces per square yard.

In NY G87641, the subject garment was classified under subheading 6205.20.2065, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for, in pertinent part, other men's shirts of cotton.

In your request for a reconsideration of NY G87641, you state that style 2802B is properly classifiable under subheading 6201.12.2050, HTSUSA, which provides for overcoats, carcoats, capes, cloaks and similar coats. In support of your assertion, you state that the subject garment possesses four jacket features and cite to the Informed Compliance Publication entitled, *What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS*, dated November, 2000. Additionally, you submit a floor plan for J.C. Penney stores indicating how the subject merchandise will be displayed/marketed within your stores (*i.e.*, in the "Outerwear" department, adjacent to other outerwear items).

Issue:

Whether the subject garment is properly classifiable as a men's shirt in heading 6205, HTSUSA, as a men's coat in 6201, HTSUSA, or as a men's anorak (including ski jackets), windbreaker or similar article in heading 6201, HTSUSA?

Law and Analysis:

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

Style 2802B is considered a hybrid garment because it exhibits features generally associated with both a shirt and a jacket. The Explanatory Notes to the Harmonized Commodity and Description and Coding System (EN) to heading 6201, HTSUSA, state that garments of this heading are generally worn over all other clothing for protection against the weather. The EN to heading 6205, HTSUSA, indicate that "with the exception of nightshirts, singlets, and other vests of heading 6207, [the] heading covers shirts not knitted or crocheted for men or boys including shirts with detachable collars, dress shirts, sport shirts and leisure shirts."

Because this garment possesses features attributable to both jackets and shirts, and neither the legal notes to the HTSUS nor the EN provide additional specific guidance in this area, we look to the *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88, (*Guidelines*) for assistance in differentiating jackets from shirts. The *Guidelines* state, in pertinent part:

Shirt-jackets have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist. They may be within the coat category if designed to be worn over another garment (other than underwear). The following criteria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:

1. Fabric weight equal to or exceeding 10 ounces per square yard.
2. A full or partial lining.
3. Pockets at or below the waist.
4. Back vents or pleats. Also side vents in combination with back seams.
5. Eisenhower styling.
6. A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.
7. Large jacket/coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
8. Lapels.
9. Long sleeves without cuffs.
10. Elasticized or rib-knit cuffs.
11. Drawstring, elastic or rib-knit waistband.

Garments having features of both jackets and shirts will be categorized as coats if they possess at least three of the above listed features and if the result is not unreasonable. * * * Garments not possessing at least 3 of the listed features will be considered on an individual basis.

As explicitly stated in the *Guidelines*, borderline garments will be classified as jackets only if they possess three jacket features and the result is not unreasonable. In the instant case, the subject garment possesses three of the jacket features referenced in the *Guide-*

lines. The garment has a full lining, pockets at or below the waist, and large jacket style snaps.

This office does not agree with your submission that the subject garment is of the requisite jacket fabric weight (*i.e.*, equal to or exceeding 10 ounces per square yard). As stated above, Customs examination of the garment concluded that the outer shell weighed only 5.4 ounces per square yard. Additionally, this office does not consider the submitted J.C. Penney floor plan indicating that the subject merchandise will be displayed/marketed with outerwear items as persuasive of the garment's classification. It is our view that such extrinsic evidence is often contradictory (different stores may display similar merchandise differently), created post-importation and thus less reliable, and generally not conducive to the uniform application of classification principles set forth in the *Guidelines* and the HTSUS.

Based on the foregoing, it is the opinion of this office that the subject garment has the overall character of a jacket based on its cut, the type of shell fabric used in its construction, the finishing details (*e.g.*, double row stitching around the pockets), and the bulk of the garment and the fleece lining which is not typically associated with lined shirts. Although the garment is classifiable in heading 6201, HTSUS, it is not classifiable in subheading 6201.12.2050, HTSUSA, in that the garment is not similar to an overcoat, carcoat, cape, cloak or similar coat. Rather, style 2802B is classifiable under subheading 6201.92.2051, HTSUSA, which covers anoraks (including ski jackets), windbreakers and similar articles.

Holding:

NY G87641 is hereby revoked.

Style 2802B is classifiable in subheading 6201.92.2051, HTSUSA, which provides for men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6203: anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets): of cotton: other: other; other: other: men's. The applicable rate of duty is 9.5 percent *ad valorem* and the quota category is 334.

The designated textile and apparel category may be subdivided 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 on Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available for inspection at the local Customs office. The *Status on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local Customs office prior to importing the merchandise to determine the current applicability 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.

CYNTHIA REESE,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

REVOCATION OF A RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF A RIFLE SOCK

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of revocation of a tariff classification ruling letter and treatment relating to the classification of a rifle sock.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is revoking New York Ruling Letter (NY) H88291, issued March 5, 2002, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a rifle sock, style 886428. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed revocation was published on October 2, 2002, in the CUSTOMS BULLETIN. One comment was received in response to the notice of proposed action.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 27, 2003.

FOR FURTHER INFORMATION CONTACT: Shirley Greitzer, Textiles Branch: (202) 572-8823.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on October 2, 2002, in the CUSTOMS BULLETIN, Volume 36, Num-

ber 40, proposing to revoke New York decision (NY) H88291, dated March 5, 2002, pertaining to the tariff classification of a rifle sock. One comment was received in response to this notice.

As stated in the proposed notice, the revocation will cover 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., 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 merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States Annotated. Any person involved with substantially identical merchandise should have advised Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling concerning the merchandise covered by this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise, subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY H88291 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965622. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise (Attachment).

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

Dated: November 1, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 1, 2002.

CLA-2 RR:CR:TE 965622
Category: Classification
Tariff No. 6307.90.9889

JOHN B. PELLEGRINI, ESQ.
ROSS & HARDIES
65 East 55 Street
New York, NY 10022-3219

Re: Revocation of New York Ruling Letter (NY) H88291; Rifle Sock: Other Made Up Article of Textiles; Storage Bag, Not Traveling Bag; *Totes, Incorporated v. United States*, 18 C.I.T. 919, 865 F. Supp. 867 (1994), aff'd, 69 F.3d 495 (Fed. Cir. 1995); Not Rifle Part or Accessory of Heading 9305.

DEAR MR. PELLEGRINI:

This letter is in response to your letter dated March 6, 2002, in which you request reconsideration of New York Ruling Letter (NY) H88291, issued March 5, 2002, in which Customs classified a rifle sock, style number 886428 in subheading 4202.92.6091, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Trunks * * * gun cases, holsters and similar containers * * *: Other: With outer surface of sheeting of plastic or of textile materials: Other: Of cotton: Other." We have reviewed that ruling and have found it to be in error. Therefore, this ruling revokes NY H88291.

Pursuant to section 625(c), Tariff Act of 1903, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY H88291 was published on October 2, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 40.

Facts:

The merchandise at issue is described as a rifle sock of textile materials. The merchandise is a tubular knit sheath approximately 55 inches in length and 4 inches in width. The fabric is a 55/45-cotton/polyester blend. One end is closed and the other has a rib-knit cuff with a drawstring closure. We are advised that the article is used to protect a rifle or shotgun from dust, dirt, moisture and scratches when not in use. The bag is not primarily designed to carry the rifle or shotgun.

It is claimed that the correct classification is as a rifle accessory in subheading 9305.29.5000, HTSUSA.

Issue:

Whether the merchandise is classified in heading 4202, HTSUS, as a gun case; in heading 9305, HTSUS, as a gun part or accessory; or in heading 6307, HTSUS, as an other made up textile article.

Law and Analysis:

Classification under the HTSUS 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 GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the Harmonized System at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 4202, HTSUS, provides for:

Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of

sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper.

In order to warrant classification under heading 4202, HTSUSA, the rifle sock must be found to share the fundamental characteristics attributable to containers of heading 4202, HTSUSA. In *Totes, Incorporated v. United States*, 18 C.I.T. 919, 865 F. Supp. 867 (1994), aff'd, 69 F3d 495 (Fed. Cir. 1995), the Court of International Trade (CIT) examined the classification of automobile trunk organizers (described as bags or cases designed to store trunk necessities such as jumper cables, tire inflator, tools, antifreeze, oil, and other fluids, etc., in a neat and orderly manner) and the application of *ejusdem generis*, to determine whether the organizers were of the same class or kind of containers as the listed 4202 exemplars. The Court found significant disparity in the physical characteristics, purposes, and uses of the individual heading 4202 exemplars, but emphasized that the essential characteristics and purposes of all of the exemplars were to organize, store, protect and carry various items. The capability of the trunk organizers to carry—not to organize, store, and protect—was a central issue in the case. After having stipulated to the fact that the organizers had hefty web handles for easy carrying, the plaintiff subsequently attempted to minimize the organizers' carrying capacity and function. The Court, however, rejected any requirement that the principal design feature of an article classified as a "similar container" under heading 4202 be portability or transportation of the contents.

Like the trunk organizers, the subject textile rifle sock is not principally designed for the transportation of contents. The CIT in *Totes*, recognized that portability is usually an incidental purpose of jewelry boxes and certain tool chests classifiable in heading 4202, but noted that those containers nevertheless retained their primary uses to organize, store and protect articles. However, unlike the trunk organizers—which featured internal movable dividers by which a variety of items could be compartmentalized—the subject textile rifle sock features little in the way of organizational characteristics. The essential characteristics and purpose of the textile rifle sock is to store and protect a rifle or shotgun, not to organize, store, protect and carry various items.

Among other goods, heading 9305, HTSUS, covers parts and accessories of shotguns and rifles of heading 9303. The EN to heading 9305 state parts and accessories of the heading includes "* * * (3) **[p]rotective covers and protective cases**, for butts, sights, barrels or breeches.

You argue that the rifle sock is similar to the protective covers and protective cases for butts, sights, barrels or breeches provided for in heading 9305, HTSUS. We do not agree.

We note that when a tariff provision or EN lists a number of items and is followed by a general word or phrase, like the use of the phrase "similar containers," the rule of statutory construction called *ejusdem generis* applies. See *Avenues in Leather, Inc. v. United States*, 178 F3d 1241, 1244 (Fed. Cir. 1999). Imported merchandise falls within the general phrase if it possesses the essential characteristics or purposes uniting the listed exemplars and does not have a more specific primary purpose that is inconsistent with the listed exemplars. In the instant case the EN to heading 9305 state parts and accessories of the heading includes "* * * (3) **[p]rotective covers and protective cases**, for butts, sights, barrels or breeches. The phrase "similar items" is not used. Therefore a protective cover for a rifle is not consistent with listed examples of covers. In addition we note that butts, sights, barrels and breeches are specific parts, but not the only parts, of the articles of headings 9301 to 9304. Each of these articles makes the rifle usable or widens its range of usefulness. However, only the protective covers and protective cases for butts, sights, barrels or breeches are included as parts and accessories of the heading. It is also our view that the heading is limited to protective covers for parts of the articles of 9301 to 9304 and not for covers for the articles (rifles or shotguns) themselves. We note additionally that the EN to heading 9305 states that the heading excludes gun cases (heading 42.02). Accordingly, protective covers for the rifle (the rifle sock) are not included in this heading.

Heading 6307, HTSUS, provides for other made up articles of textile materials. The Explanatory Notes for this heading state that the heading covers made up articles of any textile material that are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature. The EN indicate that the heading excludes travel goods (suit-cases, rucksacks, etc.), shopping-bags, toilet-cases, etc., and all similar containers of heading 4202. The EN also state, in pertinent parts, that the heading includes loose covers for motor-cars, machines, suitcases, tennis rackets, etc.; domestic laundry or shoe bags and similar articles; garment bags other than travel garment bags; and tea cosy covers. The essential purposes of the exemplars listed in the EN are storage and/or protection. We

note that the gun would be put into the rifle sock before being stored in the display case or safe in one's home. This rifle sock helps to protect the gun from scratches, as well as helping absorb any moisture in the air to prevent the rifle from rusting. The gun would be transferred to a rifle case before traveling. The rifle sock shares the essential purposes of storage and/or protection. In light of this fact and the foregoing discussion, we find that the textile rifle sock is classified in subheading 6307.90.9889, HTSUSA.

Holding:

The textile rifle sock is classified in subheading 6307.90.9889, HTSUSA, the provision for "Other made up articles, including dress patterns: Other: Other: Other: Other." The general column one duty rate is 7 percent ad valorem.

NY H88291, issued March 5, 2002, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

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

PROPOSED REVOCATION OF RULING LETTERS AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
HORSE BOOTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of two ruling letters and treatment relating to tariff classification of horse boots.

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 two rulings pertaining to the tariff classification of horse boots under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before December 27, 2002.

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

FOR FURTHER INFORMATION CONTACT: Holly Files, General Classification Branch (202) 572-8866.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke two ruling letters pertaining to the tariff classification of horse boots. Although in this notice Customs is specifically referring to two rulings (NY H87074 and HQ 085282), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

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

In NY H87074, dated January 24, 2002 (Attachment A), Customs classified certain horse boots in subheading 3926.90.9880, HTSUS, as other articles of plastics and articles of other materials of headings 3901 to 3914: other: other. In HQ 085282, dated October 18, 1989 (Attachment B), Customs classified certain horse boots in subheading 4016.99.50, HTSUS, as other articles of vulcanized rubber other than hard rubber: other.

It is now Customs position that horse boots are provided for in subheading 4201.00.60, HTSUS, which provides for "Saddlery and harness for any animal (including traces, leads, knee pads, muzzles, saddle cloths, saddle bags, dog coats and the like), of any material: other."

According to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs), goods of heading 4201, HTSUS, include "equipment for all kinds of animals, of leather, composition leather, furskin, textiles or other materials." The EN explicitly states that such goods include boots for horses.

The horse boots considered in NY H87074 are made of polyurethane plastic and have textile straps, which secure the boot to the hoof of the horse. These boots only cover the hoof and not the leg of the horse. The boots were classified in subheading 3926.90.9880 because of the decision reached in HQ 085282, where we stated that the terminology "horse boots" should be construed as a protective sheath for a horse's leg according to Webster's II New Riverside Dictionary (1984) at p. 190. The "Soft Shoe" considered in HQ 085282 is made of rubber and is different from the traditional steel horseshoe in that it extends onto the hoof of the horse and fastens around the back of the hoof.

A product literally included in a tariff definition may nonetheless be excluded upon a showing of legislative intent, *United States v. Andrew Fisher Cycle Co.*, 57 C.C.P.A. 102, 426 F.2d 1308, 1311 (CCPA 1970), but there must be "strong and sufficient indications that it was the intent of Congress" to exclude the product at issue. *Id.* There is no indication that horse boots that only cover the hooves of horses should be excluded from the tariff definition of saddlery and harness. We therefore conclude that horse boots are classifiable as saddlery and harness for any animal * * * of any material of heading 4201, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY H87074 and HQ 085282 and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in HQ 965898 (Attachment C). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking

this action, we will give consideration to any written comments timely received.

Dated: November 8, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, January 24, 2002.
CLA-2-39:RR:NC:SP:221 H87074
Category: Classification
Tariff No. 3926.90.9880

MS. NANCY RAETZ
UNITRANS INTERNATIONAL CORPORATION
*709 S. Hindry Avenue
Inglewood, CA 90301-3005*

Re: The tariff classification of horse boots from Indonesia.

DEAR MS. RAETZ:

In your letter dated January 3, 2002, on behalf of Old Mac's Pty Ltd., Australia, you requested a classification ruling.

A sample was provided with your letter. The horse boot is composed of polyurethane plastic. The boot has textile straps to secure it to the hoof of the horse. The boot is designed to allow the horse to tread over rugged terrain in comfort. As you requested, the sample is being returned.

The applicable subheading for the horse boots will be 3926.90.9880, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastics, other. The rate of duty will be 5.3 percent ad valorem.

Articles classifiable under subheading 3926.90.9880, HTS, which are products of Indonesia may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on "CEBB" then search for the term "T-GSP".

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 Joan Mazzola at 646-733-3023.

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, October 18, 1989.
CLA-2 CO:R:C:G 085282 AJS
Category: Classification
Tariff No. 4201.00.60 and 4016.99.50

MR. ZONGYI ZHANG
APPLIED CONCEPTS, INC.
700 Second Avenue
Pittsburgh, PA 15219

Re: Rubber horseshoe.

DEAR MR. ZHANG:

Your letter of June 28, 1989, requesting the tariff classification and duty rate for rubber horseshoes has been referred to this office for reply.

Facts:

The article in question is called the "Soft Shoe". It is a horseshoe which is made of rubber instead of steel. The item eliminates the need for steel shoes in all riding activities and horse care. The literature submitted with your inquiry states that the shoe is ideal for transporting, trail riding, show, pleasure riding, work, breeding, endurance, and the comfort of horses. The shoe is claimed to be made of 100 percent pure urine resistant rubber. However, your letter states that the shoe is made of either a 50/50 or a 30/70 combination of neoprene/rubber.

The "Soft Shoe" is also different from the traditional steel horseshoe in that it extends onto the hoof of the horse and fastens around the back of the hoof somewhat similar to a shoe on a human.

Issue:

Whether the article in question is classifiable within subheading 4201.00.60, HTSUSA, which provides for "[s]addlery and harness for any animal * * *, of any material: [o]ther."; or within subheading 4016.99.50, HTSUSA, which provides for "[o]ther articles of vulcanized rubber other than hard rubber: [o]ther. [o]ther."

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification is determined first in accordance with the terms of the headings of the tariff and any relative section or chapter notes.

Horse and mule shoes are specifically provided for in subheading 7326.90.45, HTSUSA. However, heading 7326 provides for articles of iron or steel. Based on the fact that the article in question is made of rubber and not iron or steel, it cannot properly be classified within this subheading.

Subheading 4201.00.60, HTSUSA, provides for other saddlery and harness for any animal, which is made of any material. In ruling letter HQ 084070, this office stated that "[t]he terms "saddlery" and "harness" cover items comprising a seat, equipment used to attach a pack, or articles made of strap to fasten, control or direct an animal." Definition of the word "saddle", Webster's II New Riverside University Dictionary (1984) at p. 1030; Definition of the term "harness", Id. at p. 1030. A horseshoe does not meet this description of "saddlery" and "harness".

The Explanatory Notes (EN) to heading 42.01 state that this heading covers equipment for all kinds of animals, of leather, composition leather, fur skin, textiles or other materials. The notes also expand the definition to include "boots for horses". The article in question could possibly be considered equipment for animals of other materials, especially in light of the term "boots for horses." However, the term "boot" is defined as a protective sheath for a horse's leg. Webster's II New Riverside University Dictionary (1984) at p. 190. The "soft shoe" is not a protective sheath for the horse's leg. It is a protective shoe for the horse's hoof.

The General ENs to chapter 42 state that "[t]his chapter principally covers articles of leather or composition leather; however, headings 42.01 and 42.02 also include certain ar-

ticles characteristically of the leather trade but made from other material * * * The “soft shoe” does not appear to us to be characteristic of the leather trade in this context and we do not consider it to be an article of saddlery and harness. The submitted literature states that the “soft shoe” will be a mixture of natural and synthetic rubber. Chapter 40, Note 1, states that the expression “rubber” means both natural and synthetic rubber, whether or not vulcanized. Thus, the “soft shoe” is made of material which satisfies the description of “rubber” in chapter 40.

In almost all cases, finished products made of rubber such as the “soft shoe” are made of vulcanized rubber. The General Explanatory Notes to Chapter 40 state that “vulcanized refers in general to rubber (including synthetic rubber) which has been cross-linked with sulfur or any other vulcanizing agent * * * so that it passes from a mainly plastic state to a mainly elastic one.” It is our understanding that the article in question meets this description of vulcanized rubber. Articles of vulcanized rubber are provided for in headings 40.07 to 40.16. The “soft shoe” is not provided for in headings 40.07 to 40.15. Therefore, it must be classifiable in heading 40.16 which provides for other articles of vulcanized rubber.

The article in question is not specifically provided for within heading 4016. Thus the shoe would be classifiable in either subheading 4016.99.25 as an other article of natural rubber or in subheading 4016.99.50 as an other article of rubber. The article is a mixture of natural and synthetic rubber, with neither type making up the essential character of the item. GRI 2(b) states that classification of goods consisting of mixtures and combinations of substances shall be classified according to the principles of GRI 3.

GRI 3(a) provides that when goods are prima facie classifiable under two or more headings, the heading which provides the most specific description shall be preferred over a heading which provides a more general description. This statement would appear to make the “soft shoe” classifiable under the heading for natural rubber because this is more specific than the heading for other articles of rubber. However, this rule goes on to require that when two or more headings each refer to part only of the materials contained in mixed goods, those headings are to be regarded as equally specific in relation to those goods. This is the case even if one of them gives a more complete or precise description of the goods. This is exactly the situation in this case. Each subheading refers to only part of the material which makes up the “soft shoe”, and the subheading for natural rubber is a more precise description. Therefore, both subheadings are equally specific and classification cannot be accomplished by the use of GRI 3(a).

The ENs to GRI 3 require that if rule 3(a) fails then rule 3(b) is to be considered next. GRI 3(b) requires that mixtures shall be classified as if they consisted of the material which gives them their essential character. Neither the natural nor synthetic rubber in the “soft shoe” imparts the essential character to the article. Therefore, the article cannot be classified by the terms of GRI 3(b).

If GRI 3(b) fails, then the article is to be classified in the heading which occurs last in numerical order among those which equally merit consideration. GRI 3(c). Accordingly, this rule requires the “soft shoe” to be classified in subheading 4016.99.50 instead of 4016.99.25.

Holding:

The article in question is classifiable within subheading 4016.99.50, HTSUSA, which provides for other articles of vulcanized rubber. The applicable duty rate is 5.3 percent ad valorem.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965898 HEF
Category: Classification
Tariff No. 4201.00.60

MR. BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
1 Lincoln Boulevard
Rouses Point, NY 12979

Re: Reconsideration of **NY H87074**; horse boots.

DEAR MR. KAVANAUGH:

This is in response to your letter dated September 10, 2002, requesting reconsideration of New York Ruling Letter (NY) H87074, issued to Unitrans International Corporation on January 24, 2002, on behalf of Old Mac's Pty Ltd., which classified certain horse boots under subheading 3926.90.98, of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics and articles of other materials of headings 3901 to 3914: other: other. We have had an opportunity to review this ruling and have determined that it is incorrect.

Facts:

The subject merchandise is a horse boot of polyurethane plastic, with textile straps to secure it to the hoof of the horse. It is designed to allow the horse to tread over rugged terrain in comfort. Old Mac's boots are designed for riding, transport, or rehabilitation after injury.

Issue:

Whether the subject merchandise is classifiable as articles of plastic under subheading 3926.90.98, HTSUS, or saddlery and harness for any animal under subheading 4201.00.60, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

| | |
|-------------|---|
| 3926 | Other articles of plastics and articles of other materials of headings 3901 to 3914: |
| 3926.90 | Other: |
| 3926.90.98 | Other. |
| * | * * * * * |
| 4201 | Saddlery and harness for any animal (including traces, leads, knee pads, muzzles, saddle cloths, saddle bags, dog coats and the like), of any material: |
| 4201.00.60 | Other. |

EN 42.01, in pertinent part, states: "This heading covers equipment for all kinds of animals, of leather, composition leather, furskin, textiles or other materials. These goods include, *inter alia*, * * * boots for horses."

Horse boots are not defined in the HTSUS or the ENs. A tariff term that is not defined in the HTSUS or ENs is construed in accordance with its common or commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources.

The definition of horse boots which Customs relied upon in Headquarters Ruling Letter (HQ) 085282, dated October 18, 1989, defined boot as “a protective sheath for a horse’s leg.” Webster’s II New Riverside University Dictionary (1984) at p. 190. Thus, in HQ 085282, Customs did not consider the item at issue, the “Soft Shoe”, as a horse boot because it was a protective shoe for the horse’s hoof and not the horse’s leg. We now believe this ruling to be incorrect and the definition relied upon to be too narrow for purposes of correctly construing the legislative intent of Congress in adopting heading 4201.

In another dictionary, “Boot” is defined as “a protective covering for the foot and part of the leg of a horse.” The Oxford English Dictionary (1989) at p. 404. Since this definition conflicts to some extent with the one previously relied upon by Customs, it is our opinion that the meaning of the term is imprecise such that a clear definition of that term cannot be determined. However, whenever the common meaning is somewhat indefinite, “it is proper to consider the interpretation commonly placed upon it in the particular industry involved.” *United States v. Colonial Commerce Co., Ltd.*, et al., 44 CCPA 18, C.A.D. 629 (1956).

Hence, we look to the tack industry with respect to marketing of these goods. Protective horse boots are designed to protect different parts of the horse’s leg and hoof. The area that a horse’s boot may protect extends from the oblique extensor of the knee and the superficial flexor tendon to the coronet band and hoof. Thus, the term horse boots seems to include not only articles forming a protective sheath for the horse’s leg, but also articles which cover solely the hoof. See *About the Horse*, at <http://www.horseboots/athrs.html> (Oct. 11, 2002). Examples of these articles include but are not limited to quarter boots, bell boots, and coronet boots.

Furthermore, the Court of International Trade stated that “[w]hile an importer’s catalogs and advertisements are not dispositive in determining the correct classification of goods under the HTSUS, they are certainly probative of the way the importer viewed the merchandise and of the market the importer was trying to reach.” *THK America, Inc. v. U.S.*, 837 F. Supp. 427, 433 (1993); *Marubeni America Corp. v. U.S.*, 821 F.Supp. 1521, 1528 (1993). Old Mac’s Pty Ltd. markets the subject merchandise as a multi-purpose horse boot. Old Mac’s horse boots are “used for transportation, injury prevention and/or rehabilitation, as well as a genuine replacement for the metal shoe in day to day riding.” See Old Mac’s Boots & Horse Care, at <http://www.yourhorse.care.com/faq.htm> (Sept. 10, 2002).

Current industry standards include horse boots which form a protective sheath for the horse’s leg as well as boots which cover only the hoof, and boots covering both the leg and hoof. It is Customs’ opinion that HQ 085282 construed the definition of “boots for horses” too narrowly. That ruling is also being reconsidered. Sources dating back to the 1940s have deemed horse boots as articles protecting either the horse’s leg or solely the horse’s hoof. See Margaret Cabell Self, *Riding Simplified* 7 (A.S. Barnes & Company, Inc. 1948) (Diagram featuring coronet boots, rubber boots, and boots (buckled on)). This evidence combined with the common and commercial meaning in the tack industry lead to the conclusion that horse boots include not only boots covering the horse’s leg but also boots which protect and cover the hoof only. It is important to note that bandages or wraps used for medical purposes such as the treatment of wounds are not classified as saddlery. Such items are more specifically provided for in heading 3005.

Thus, the subject merchandise’s proper classification is under subheading 4201.00.60, HTSUS, which provides for “Saddlery and harness for any animal (including traces, leads, knee pads, muzzles, saddle cloths, saddle bags, dog coats and the like), of any material: other.”

Holding:

The subject merchandise is classifiable in subheading 4201.00.60 HTSUS, as “Saddlery and harness for any animal (including traces, leads, knee pads, muzzles, saddle cloths, saddle bags, dog coats and the like), of any material: other.”

Effect on Other Rulings:

NY H87074 and HQ 085282 are revoked.

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