

Bureau of Customs and Border Protection

General Notice

COPYRIGHT, TRADEMARK, AND
TRADE NAME RECORDATIONS

(No. 5-2003)

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

SUMMARY: The copyrights, trademarks, and trade names recorded with the Bureau of Customs and Border Protection during the month of May 2003. The last notice was published in the CUSTOMS BULLETIN on May 28, 2003.

Corrections or information to update files may be sent to Department of Homeland Security, Bureau of Customs and Border Protection, Office of Regulations and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: George Frederick McCray, Esq., Chief, Intellectual Property Rights Branch, (202) 572-8710.

Dated: June 12, 2003.

GEORGE FREDERICK MCCRAY, ESQ.

Chief,

Intellectual Property Rights Branch.

The list of recordations follow:

REC. NUMBER	EFF. DT.	EXP. DT.	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
SUBTOTAL RECORDATION TYPE 9					
TMK0300356	20030501	20120507	CHAR-G	TOMY CORPORATION	N
TMK0300357	20030501	20110918	BAY BEAUTY	ROOCHI TRADERS, INC.	N
TMK0300358	20030505	20130107	MONTERICO & DESIGN	MENDIVIL, LIC. C. ROBERTO DE LA	N
TMK0300359	20030505	20121008	2020TC IMAGER (STYLIZED)	DIGIRAD CORPORATION	N
TMK0300360	20030505	20130213	HASEGAWA & DESIGN	KABUSHIKI KAISHA HASEGAWA ALSO	N
TMK0300361	20030505	20130118	LORUS	SEIKO KABUSHIKI KAISHA (TRADING	N
TMK0300362	20030505	20120423	SALAD BLASTER	GUATEPLAST S.A.	N
TMK0300363	20030505	20130315	ALMOND ROCA	BROWN & HALEY	N
TMK0300364	20030505	20121015	MISHHASH	TOO, INC.	N
TMK0300365	20030505	20111225	BORJOHI	ASSOCIATION GEORGIAN GLASS &	N
TMK0300366	20030505	20100411	LABEL DESIGN	ASSOCIATION GEORGIAN GLASS &	N
TMK0300367	20030505	20100411	LABEL DESIGN	ASSOCIATION GEORGIAN GLASS &	N
TMK0300368	20030505	20100720	DESIGN (CITRINE WOLF)	ASSOCIATION GEORGIAN GLASS &	N
TMK0300369	20030505	20121229	PRO SELECT INC.	ASSOCIATION GEORGIAN GLASS &	N
TMK0300370	20030506	20220628	EXPRESSIONS KIDS	PRB SELECT INC.	N
TMK0300371	20030506	20121013	EXPRESSIONS	ALMAR SALES CO., INC.	N
TMK0300372	20030506	20120929	EXPRESSIONS KIDS	ALMAR SALES CO., INC.	N
TMK0300373	20030506	20051203	TAYLOR MADE	ALMAR SALES CO., INC.	N
TMK0300374	20030506	20120402	TAYLOR MADE & DESIGN	TAYLOR MADE GOLF COMPANY, INC.	N
TMK0300375	20030506	20080308	TAYLOR MADE & DESIGN	TAYLOR MADE GOLF COMPANY, INC.	N
TMK0300376	20030506	20120312	TAYLOR MADE & DESIGN	TAYLOR MADE GOLF COMPANY, INC.	N
TMK0300377	20030506	20061209	TAYLOR MADE	TAYLOR MADE GOLF COMPANY, INC.	N
TMK0300378	20030506	20070113	TAYLOR MADE	TAYLOR MADE GOLF COMPANY, INC.	N
TMK0300379	20030506	20120402	T & DESIGN	TAYLOR MADE GOLF COMPANY, INC.	N
TMK0300380	20030506	20100807	DESIGN	TAYLOR MADE GOLF COMPANY, INC.	N
TMK0300381	20030507	20100706	TAYLOR MADE	TAYLOR MADE GOLF COMPANY, INC.	N
TMK0300382	20030507	20121119	ROCKWOOD (& DESIGN)	TAYLOR MADE GOLF COMPANY, INC.	N
TMK0300383	20030507	20130225	HI D.F.	ROCKWOOD PRODUCTS, INC.	N
TMK0300384	20030507	20130107	DESIGN (TOY JACK WITH A ROUND BALL FOR A HEAD)	DAIRYLAND SEED CO., INC.	N
TMK0300385	20030508	20120305	MI COCINAC (& DESIGN)	ALLOY LLC	N
TMK0300386	20030508	20130311	MI COCINAC	VILORE FOODS COMPANY, INC.	N
TMK0300387	20030508	20101010	DESIGN (LADY ENYCE)	ENYCE, L.L.C.	N
TMK0300388	20030508	20070902	ENYCE	ENYCE, L.L.C.	N
TMK0300389	20030508	20100404	LADY ENYCE	ENYCE, L.L.C.	N
TMK0300390	20030508	20100523	ENYCE & DESIGN	ENYCE, L.L.C.	N
TMK0300391	20030513	20040125	CONFIGURATION OF A MANUALLY OPERATED HAND PUMP TRIGGER	ENYCE, L.L.C.	N
TMK0300392	20030513	20120402	115 AND DESIGN	ENYCE, L.L.C.	N
				KARSTEN MANUFACTURING CORP.	N

06/05/2003
13:31:33

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN MAY 2003

PAGE
DETAIL 2

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0300393	20030513	20120723	DESIGN	SOLO INCORPORATED	N
TMK0300394	20030513	20120702	DESIGN	SOLO INCORPORATED	N
TMK0300395	20030513	20050228	SOLO	SOLO INCORPORATED	N
TMK0300396	20030521	20130308	VANITY FAIR	ADVANCE MAGAZINE PUBLISHERS INC.	N
TMK0300397	20030521	20121229	BABYGUND	GUND, INC.	N
TMK0300398	20030521	20090822	GAS	MG OVERSEAS LTD.	N
TMK0300399	20030521	20100403	TOYOTA	TOYOTA JIDGSHA KABUSHIKI KAISHA	N
TMK0300401	20030521	20130504	ENERGIZER BUNNY	EVEREADY BATTERY COMPANY INC.	N
TMK0300402	20030521	20121215	EVISTA	SIEGFRIED & PARZIFAL, INC.	N
TMK0300403	20030529	20070923	EVISTA	ELI LILLY AND COMPANY	N
TMK0300404	20030529	20110918	LEAPPAD	LEAPFROG ENTERPRISES, INC.	N
TMK0300405	20030529	20081201	PHONICS DESK	LEAPFROG ENTERPRISES, INC.	N
TMK0300406	20030529	20120129	LEAPFROG	LEAPFROG ENTERPRISES, INC.	N
TMK0300407	20030529	20081201	PHONICS BUS	LEAPFROG ENTERPRISES, INC.	N
TMK0300408	20030529	20121112	MIND STATION	LEAPFROG ENTERPRISES, INC.	N
TMK0300409	20030529	20110501	LEAPFROG	LEAPFROG ENTERPRISES, INC.	N
TMK0300410	20030529	20120129	LEAPFROG	LEAPFROG ENTERPRISES, INC.	N
TMK0300411	20030529	20091012	LEAPFROG AND DESIGN	LEAPFROG ENTERPRISES, INC.	N
TMK0300412	20030530	20100801	TWO LETTERS "J" CONNECTED	JIVAGO INC.	N

SUBTOTAL RECORDATION TYPE 56
TOTAL RECORDATIONS ADDED THIS MONTH 65

RECEIPT OF AN APPLICATION FOR "LEVER-RULE"
PROTECTION

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security

ACTION: Notice of receipt of application for "Lever-Rule" protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Tomy Corporation seeking "Lever-Rule" protection.

FOR FURTHER INFORMATION CONTACT: Rachel S. Bae, Esq., Intellectual Property Rights Branch, Office of Regulations & Rulings, (202) 572-8875.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Tomy Corporation seeking "Lever-Rule" protection. Protection is sought against importations of "CHAR-G" table-top radio control cars intended for sale outside of the United States which bears the trademark "CHAR-G" (U.S. Patent & Trademark Office [USPTO] Registration No. 2,568,272; CBP Recordation No. TMK 03-00356). Pursuant to 19 CFR 133.2(f), CBP will publish an additional notice in the Customs Bulletin indicating if the trademark will receive Lever-Rule protection relative to the table-top radio control car in the event that CBP determines that the subject gray market product is physically and materially different from the product authorized for sale in the United States.

Dated: June 13, 2003

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

CANCELLATION OF CUSTOMS BROKER LICENSE DUE TO
DEATH OF THE LICENSE HOLDER

AGENCY: BUREAU OF CUSTOMS AND BORDER PROTECTION,
U.S. DEPARTMENT OF HOMELAND SECURITY

ACTION: General Notice

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following individual Customs broker license and any and all associated permits have been cancelled due to the death of the broker:

<u>Name</u>	<u>License #</u>	<u>Port Name</u>
Robert J. McCracken	03346	Detroit
Emilio E. Ruiz	04434	Miami
Sig M. Glukstad	03864	Miami
Mary Kay Angel	21807	Houston
Robert E. Mullins	04130	San Francisco

DATED: June 10, 2003

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

[Published in the Federal Register, June 17, 2003 (35907)]

NOTICE OF CANCELLATION OF CUSTOMS BROKER LICENSE

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

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 and any and all associated local and national permits are canceled without prejudice:

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
Key Custom's Brokerage, Inc.	14890	Seattle
A.W. Fenton Company, Inc.	00021	Cleveland

DATED: June 10, 2003

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

[Published in the Federal Register, June 17, 2003 (35907)]

NOTICE OF CANCELLATION OF CUSTOMS BROKER LICENSE

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

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 are canceled without prejudice.

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
Peter Vaccaro	07980	Champlain
Peter Vaccaro	07451	Detroit
Philip W. Hughes	05631	Seattle

These brokers hold multiple Customs broker licenses. They continue to hold other valid Customs broker licenses.

DATED: June 10, 2003

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

[Published in the Federal Register, June 17, 2003 (35908)]

NOTICE OF CANCELLATION OF CUSTOMS BROKER PERMIT

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

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 local permits are canceled without prejudice.

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
Anthony Nogueras	28-01-MP8	San Francisco
Freight Solutions International	LLC28-01-MQ6	San Francisco
Rulewave, Inc.	96-2101-1	Houston
Jeanette Larbardini CHB	98-007	Houston
W.R. Zanes & Co., of LA, Inc.	96-2101-2	Houston
XL Brokers International, Inc.	97-003	Houston
USF Worldwide, Inc.	09549	San Francisco
Mildred L. Vavao	28-02-AQF	San Francisco

DATED: June 10, 2003

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

[Published in the Federal Register, June 17, 2003 (35908)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, June 18, 2003,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

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

PROPOSED MODIFICATION OF RULING LETTER AND TREATMENT RELATING TO THE APPLICABILITY OF SUBHEADING 9802.00.50 TO MEN'S SWEATSHIRTS EMBROIDERED IN MEXICO

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

ACTION: Notice of proposed modification of a ruling letter and treatment relating to the eligibility of men's sweatshirts exported to Mexico for embroidery operations and returned for duty-free treatment under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) intends to modify a ruling letter pertaining to the eligibility of certain embroidered sweatshirts for a duty exemption under subheading 9802.00.50, HTSUS. CBP also proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before August 4, 2003.

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

FOR FURTHER INFORMATION CONTACT: Craig A. Walker, Special Classification and Marking Branch, (202) 572-8836.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to 19 U.S.C. 1625(c)(1), this notice advises interested parties that CBP intends to modify a ruling letter pertaining to the applicability of subheading 9802.00.50, HTSUS, to certain men's sweatshirts that are embroidered in Mexico. Although in this notice CBP is specifically referring to New York Ruling Letter ("NY") I87698, dated December 5, 2002, this notice covers any rulings involving substantially identical transactions which may exist but have not been identified that are based on the same rationale. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretative ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) relating to transactions which are substantially identical to those subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by it to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the law. Any person involved in substantially

identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Subheading 9802.00.50, HTSUS, provides for a partial or complete duty exemption for articles exported from and returned to the United States after having been advanced in value or improved in condition abroad by repairs or alterations, provided the documentary requirements of 19 CFR 181.64 (for articles returned from Canada or Mexico) or 19 CFR 10.8 (for articles returned from any other country), are satisfied.

In NY I87698, dated December 5, 2002, CBP held that certain foreign-origin men's sweatshirts that are exported from the United States to Mexico where they are embroidered on the chest area with various names or logos and then returned to this country, are ineligible for special tariff treatment under subheading 9802.00.50, HTSUS. This ruling also addressed the country of origin of the returned sweatshirts. NY I87698 is set forth as Attachment "A" to this document.

CBP has reconsidered the above ruling and determined that it is incorrect in holding that classification under subheading 9802.00.50, HTSUS, is inapplicable to the sweatshirts. It is now CBP's position that, in regard to the specific factual situation involved in this ruling, the foreign embroidery operation qualifies as an acceptable alteration under this tariff provision. Proposed Headquarters Ruling Letter (HRL) 562687, modifying NY I87698, is set forth as Attachment "B" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), this notice advises interested parties that CBP intends to modify NY I87698 and any other rulings not specifically identified, to reflect the proper classification of the merchandise under subheading 9802.00.50, HTSUS, pursuant to the analysis set forth in proposed HRL 562687. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by it to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: June 17, 2003

MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY 187698
December 5, 2002
CLA-2-61:RR:NC:TA:N3:356 I87698
CATEGORY: Classification
TARIFF NO.: 9802.00.50

Ms. ELIZABETH BURNS
JANSPORT, INC.
N850 Cty. Hwy. CB
P.O. Box 1817
Appleton, WI 54913-1817

RE: Eligibility of men's sweatshirts for partial duty exemption under subheading 9802.00.50, HTSUS

DEAR Ms. BURNS:

In your letter dated November 7, 2002, you requested a tariff classification ruling.

Style 55000 is a men's sweatshirt constructed from 55 percent cotton, 45 percent polyester, finely knit fabric that is napped on the inside surface. The fabric measures 21 stitches per two centimeters counted in the horizontal direction. Style 55000 has a rib knit crew neck; long sleeves with rib knit cuffs; a half-moon at the rear neckline; a woven fabric label on the right sleeve; and a snug fitting rib knit bottom. Style 55000 will be imported in sizes S, M, L, XL and XXL. The same garment will be imported in Size XXXL as Style 55005.

Two samples were submitted. Both are identical, but one has embroidery on the center chest and one is plain, without embroidery. You state that the sweatshirts will be manufactured in Lesotho without embroidery and imported into the United States under HTS 9819.11.12 with the appropriate documentation. The garments will then be exported to Mexico where they will be embroidered with various names or logos and re-imported into the United States. You request a determination regarding the eligibility of the shirts for partial duty exemption under subheading 9802.00.50, HTSUS. As requested, your samples will be returned.

Subheading 9802.00.50, HTSUS, provides a partial or complete duty exemption for articles exported from and returned to the U.S. after having been advanced in value or improved in condition by repairs or alterations, provided that documentary requirements of Section 181.64, Customs Regulations (19 C.F.R. 181.64), are satisfied. Section 181.64, which implements Article 307 of NAFTA, provides that goods returned after having been repaired or altered in Mexico may qualify for complete or partial duty free treatment, provided that the requirements of this section are met. However, entitlement to this tariff treatment is precluded in circumstances where the operations performed abroad destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture. Subheading 9802.00.50, HTSUS, treatment is also precluded where the exported articles are incomplete for their intended use and the foreign processing operation is a necessary step in the preparation or manufacture of finished articles.

In this instance, the embroidery operation creates a different article with unique, specialized appeal and constitutes a finishing step in the manufacture of the embroidered garments. As such, the embroidery operation is considered more than an "alteration" within the meaning of subheading 9802.00.50, HTSUS. Consequently, the sweatshirts are not entitled to the special tariff treatment under that provision. See HRL 555760 of November 16, 1990 and HRL 555249 of June 16, 1989.

The country of origin of the merchandise remains Lesotho.

The applicable subheading for the sweatshirt will be 6110.20.2040, Harmonized Tariff Schedule of the United States, (HTS), which provides for: men's or boys' sweatshirts, knitted or crocheted: of cotton: men's. The general rate of duty will be 17.3 percent ad valorem.

The sweatshirts fall within textile category designation 338. Based upon international textile trade agreements, products of Lesotho are not presently subject to visa requirements or quota restraints.

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

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

A copy of this ruling letter or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding this ruling, contact National Import Specialist Mary Ryan at 646-733-3271.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 562687
CLA-2 RR:CR:SM 562687 CW
CATEGORY: Classification
TARIFF NO.: 9802.00.50

Ms. ELIZABETH BURNS
JANSPORT, INC.
N850 Cty. Hwy. CB
P.O. Box 1817
Appleton, WI. 54913-1817

RE: Modification of NY I87698; eligibility of sweatshirts embroidered abroad for sub-heading 9802.00.50, HTSUS, treatment

DEAR Ms. BURNS:

This is in reference to your letter of January 23, 2003, to our New York office, requesting reconsideration of New York Ruling Letter ("NY") I87698 dated December 5, 2002, concerning the eligibility of embroidered men's sweatshirts from Mexico for duty-free treatment under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS). The ruling also addressed the country of origin of the sweatshirts. We have reviewed NYI87698 and believe that its conclusion that sub-heading 9802.00.50, HTSUS, is inapplicable to the returned embroidered sweatshirts is incorrect. Therefore, we are modifying the portion of NY I87698 relating to that issue for the reasons set forth below.

FACTS:

Men's sweatshirts (style 55000 for sizes S, M, L, XL and XXL and style 55005 for size XXXL) made in Lesotho from 55 percent cotton and 45 percent polyester will be imported into the U.S. by Jansport. The sweatshirts are then exported to Mexico where they will be machine embroidered with various names or logos on the chest area and returned to the U.S. Jansport's catalog reflects that the sweatshirts are offered for sale with or without the embroidery.

In NY I87698, Customs held that:

* * * the embroidery operation creates a different article with unique, specialized appeal and constitutes a finishing step in the manufacture of the embroidered garments. As such, the embroidery operation is considered more than an "alteration" within the meaning of subheading 9802.00.50, HTSUS.

ISSUE:

Whether embroidering the sweatshirts in Mexico as described above qualifies as a repair or alteration under subheading 9802.00.50, HTSUS.

LAW AND ANALYSIS:

Subheading 9802.00.50, HTSUS, provides a full or partial duty exemption for articles that are returned after having been exported to be advanced in value or improved in condition by means of repairs or alterations, provided that the documentary requirements of 19 CFR 181.64 (for articles returned from Canada or Mexico) or 19 CFR 10.8 (for articles returned from any other country) are met.

Section 181.64(a), Customs Regulations, (19 CFR 181.64(a)), states that:

'Repairs or alterations' means restoration, addition, renovation, redyeing, cleaning, reesterilizing, or other treatment which does not destroy the essential character of, or create a new and commercially different good from, the good exported from the United States.

In circumstances where the operations abroad destroy the identity of the exported article or create a new or commercially different article, entitlement to subheading 9802.00.50, HTSUS, is precluded. See *A.F. Burstrom v. United States*, 44 CCPA 27, C.A.D. 631 (1956), *aff'd* C.D. 1752, 36 Cust. Ct. 46 (1956); and *Guardian Industries Corporation v. United States*, 3 CIT 9 (1982). Additionally, entitlement to this tariff treatment is not available where the exported articles are incomplete for their intended purposes and the foreign processing is a necessary step in the preparation or manufacture of the finished articles. *Dolliff & Company, Inc. v. United States*, 455 F. Supp. 618 (Cust. Ct. 1978), *aff'd*, 599 F.2d 1015 (CCPA 1979).

In *Amity Fabrics, Inc. v. United States*, 43 Cust. Ct. 64, C.D. 2104 (1959), "pumpkin" colored fabrics were exported to Italy to be redyed black since the pumpkin color had gone out of fashion and black was a consistently good seller. The court held that the identity of the goods was not lost or destroyed by the dyeing process, that no new article was created since there was no change in the character, quality, texture, or use of the merchandise; it was merely changed in color. The court found that such change constituted an alteration for purposes of a precursor provision to subheading 9802.00.50, HTSUS (paragraph 1615(g) of the Tariff Act of 1930, as amended).

In *Royal Bead Novelty Co. v. United States*, 68 Cust.Ct. 154, C.D. 4353, 342 F. Supp. 1394 (1972), uncoated glass beads were exported so that they could be half-coated with an Aurora Borealis finish which imparted a rainbow-like luster to the half-coated beads. The court found that the identity of the beads was not lost or destroyed in the coating process and no new article was created. Moreover, there was no change in the beads' size, shape, or manner of use in making articles of jewelry (evidence was presented which indicated that both uncoated and half-coated beads were used interchangeably). Accordingly, the court concluded that the application of the Aurora Borealis finish constituted an alteration within the meaning of item 806.20, Tariff Schedules of the United States (TSUS)—the precursor to subheading 9802.00.50, HTSUS.

In a notice published in the Customs Bulletin on October 4, 2000, (34 Cust. Bull. 40), Customs revoked four ruling letters and modified one ruling letter pertaining to the applicability of subheading 9802.00.50, HTSUS, to certain articles that were exported for decorating operations and then returned to the U.S. In the notice, it was stated that, upon reconsideration, Customs determined that the decorating operations performed in those cases qualified as acceptable alterations under subheading 9802.00.50, HTSUS, as the merchandise in its condition as exported and returned was marketed and sold to consumers for the same use. Furthermore, Customs found that the operations performed abroad did not result in the loss of the good's identity or create a new article with a different commercial use. The ruling letters concerned: carpet

tiles that were dyed abroad and returned; imitation plastic fingernails that were painted with decorative designs abroad; lace fabric "reembroidered" abroad with rope, sequins or beads, or a combination of these items; and decals and paint bands applied to ceramic dinnerware abroad.

The reembroidery case referenced above (Headquarters Ruling Letter (HRL) 561781 dated September 19, 2000), involved foreign lace that was exported to the Philippines to have rope (thick thread), sequins or beads, or any combination of these items, hand embroidered onto the lace. The purpose of the reembroidery was to enhance the marketability of the lace. Customs stated in HRL 561781 that information in the record indicated that both the lace in its condition as exported and the returned reembroidered lace were sold in the same channels of trade for use as ornamentation on women's wearing apparel. Therefore, Customs concluded that the lace in its condition as exported to the Philippines was complete for its intended use. Customs also determined that the reembroidery process clearly did not result in the loss of the good's identity or the creation of a new article with a different commercial use. As a result, Customs found that the reembroidery process constituted an alteration within the meaning of subheading 9802.00.50, HTSUS.

A recent case, HRL 562618 dated May 21, 2003, involved previously-imported and duty-paid polo shirts that were exported to Canada where company names or logos were embroidered onto the left chest portion of the shirts. Customs held that the embroidery constituted an acceptable alteration within the meaning of subheading 9802.00.50, HTSUS.

We believe that HRLs 562781 and 562618 are controlling with respect to the instant case. Men's sweatshirts are exported to Mexico where names or logos are embroidered on the chest area of the apparel. Jansport's catalog reflects that the same sweatshirt is offered for sale either with or without the embroidery. Therefore, we are satisfied that the sweatshirts in their condition as exported to Mexico are complete for their intended use and that the foreign processing is not a necessary step in the production or manufacture of finished articles. While the embroidery imparts new decorative characteristics to the articles, this change in the appearance of the article clearly does not result in the loss of the good's identity or the creation of a new article with a different commercial use. The embroidery also does not significantly change the quality, character or performance characteristics of the sweatshirts. Therefore, we find that the foreign embroidery operation qualifies as an alteration under subheading 9802.00.50, HTSUS.

HOLDING:

On the basis of the information presented, we find that the foreign embroidery operation described above, performed abroad on exported men's sweatshirts, constitutes an acceptable alteration under subheading 9802.00.50, HTSUS. Therefore, the returned embroidered sweatshirts are entitled to duty-free treatment under this tariff provision, assuming compliance with the documentation requirements of 19 CFR 181.64.

NY 1887698 is hereby modified consistent with the foregoing.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

NOTICE OF PROPOSED MODIFICATION AND REVOCATION OF
CLASSIFICATION LETTERS AND REVOCATION OF TREAT-
MENT RELATING TO CLASSIFICATION BASED ON THE IN-
TENT OF THE IMPORTER

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

ACTION: Notice of proposed modification of ten ruling letters and revocation of three ruling letters and revocation of treatment relating to the classification of suits, track suits, and two-piece swimwear based on the intent of the importer.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to modify ten ruling letters and revoke three ruling letters relating to the classification of suits, track suits, and two-piece swimwear because they erroneously took into account the claimed intent of the importer, that they would be offered for sale as separates rather than suits under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise.

DATE: Comments must be received on or before August 4, 2003.

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

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Textiles Branch, at (202) 572-8824.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify ten ruling letters and revoke three letters relating to the tariff classification of the merchandise based on the intent of the importer. Although in this notice CBP is specifically referring to the modification of New York Ruling Letters (NY) A87564, dated October 10, 1996; NY B83511, dated April 23, 1997; NY F83145, dated March 23, 2000; NY F83716, dated April 11, 2000; NY F83799, dated April 17, 2000; NY F83800, dated April 17, 2000; and Headquarters Ruling Letters (HQ) HQ 088423, dated May 20, 1991; HQ 952584, dated December 8, 1992; HQ 952704, dated February 1, 1993; and HQ 955519, dated April 15, 1994, and revocation of HQ 952907, dated January 29, 1993; HQ 953231, dated May 12, 1993 and HQ 956298, dated March 9, 1995 (*see* Attachments "A-M"), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP's personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified

in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In each of aforementioned rulings, the merchandise's classification was based on how the importer intended to sell the merchandise. Upon review of these rulings, CBP has determined that although the classification of the merchandise was correct, in all but three rulings, the analysis applied to reach the classification determination was incorrect. Classification of the merchandise in each of the rulings should have been based on the goods' condition as imported.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify ten ruling letters and revoke three ruling letters and any other rulings not specifically identified that are contrary to the determination set forth in this notice to reflect consistency in classification pursuant to the analysis set forth in proposed Headquarters Ruling Letters HQ 965923, HQ 965932, HQ 965933, HQ 965934, HQ 965929, HQ 965930, HQ 965931, HQ 965935, HQ 965927, HQ 965928 (see Attachments "N-W"). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: June 16, 2003

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY A87564
October 10, 1996
CLA-2-62:RR:NC:WA:360 A87564
CATEGORY: Classification
TARIFF NO.: 6204.11.0000; 6204.31.1010

Mr. JONATHAN M. FEE
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN LLP
1201 Peachtree Street, N.E.
Suite 4860
Atlanta, GA 30309

RE: The tariff classification of women's suits from China, Thailand, Sri Lanka and/or Indonesia

DEAR MR. FEE:

In your letter dated September 7, 1996, you requested a classification ruling on behalf of Sag Harbor Division of Kellwood Company. The submitted samples will be returned to you under separate cover.

Style 122 consists of a women's jacket and shorts constructed from 100 percent wool. Both garments are lined with 100 percent polyester woven fabric. The double-breasted jacket has four panels and features long sleeves, a notched collar, and two besom pockets below the waist. The shorts have a pleated front, a zippered fly and button closure and side pockets. The waistband is partially elasticized at the rear and contains four belt loops.

It is your contention that the goods meet the tariff and commercial definition for suits. However, due to the innovative retail sale practices employed by the importer, you suggest that Customs might perceive a problem in classifying the garments as suits. You presented the following information concerning the importation of the goods.

PACKING and SHIPPING: The garments will be shipped to the United States on hangers. The jacket and hanger will be covered by a plastic bag; the shorts will be covered by a separate plastic bag on another hanger; the two components will be covered by a third polybag and connected with a plastic tie. Nearly all import shipments will contain an equal number of upper and lower body garments packaged together as suits in the manner previously described. Occasionally, a shipment may include a small number of additional jackets without matching bottoms. It is the importer's understanding and intent that those pieces which do not meet the definition of a suit (i.e. a set of two garments) will be entered as separates.

DOCUMENTATION: The importer's purchase orders will refer to this combination of garments as a "suit" and will identify one style designation, 122. In addition, each component will have its own style number, the jacket, style 8505 and the shorts, style 8503. These designations will also appear on the invoices furnished by the foreign suppliers.

LABELING: Each component will be individually marked with the country of origin and the required info under TFPIA. The garments will also be marked with the component style number. Fewer than half of all shipments will be preticketed with retail sales and other retail information at the request of the importer's customers.

INTENT: The importer will sell the "suits" to its customers, although the documents will indicate the separate style numbers.

You state that nearly all shipments to customers will be of an equal number of top and bottoms, in corresponding size scales, so that they can be sold and worn as suits. The importer intends that the jackets and bottoms be of the same color and size be worn together. Sometimes a jacket of one size might be matched with a skirt or pant of another size to achieve optimal fit. A customer will rarely buy only one component.

ADVERTISING: The importer's customers will advertise the articles as suits. (Exhibit A) Although separate prices are shown, the advertising shows the garments being worn together.

DISPLAY: The merchandise will be displayed together on double rack systems or rounders. Exhibit B shows this grouping of garments grouped by size or color. Although the garments are designed and intended to be worn as suits, the jacket and shorts will rarely if ever be placed together on a single hanger. This is because a consumer may choose to buy a jacket in one size and a bottom in another size to achieve an optimal fit.

Chapter 62 note 3 sets out the requirements for suits. In part the note states that the term suit means a set of garments composed of two or three pieces made up *** in identical fabric and comprising: one suit coat or jacket *** consisting of four or more panels designed to cover the upper part of the body *** and one garment designed to cover the lower part of the body *** All of the components of a suit must be of the same fabric construction, style, color and composition; they must also be of the same style and of corresponding or compatible size.

Both garments in this case are constructed from identical woven fabric and color, and they are of the same composition.

Because they are ordered and shipped as units (equal numbers) they are of corresponding or compatible size. Accordingly, by virtue of note 3(a) to Chapter 62, the garments meet the requirements for classification as a suit.

It should be noted that each of the definitions in Chapter 62 for suits refer to a "set of garments", without limitation. In comparison, Note 3(b) which defines the term "ensemble" specifically requires that an ensemble be "put up for retail sale". The silence of the suit definition in this area when compared to the express requirements contained in the ensemble definitions, is a clear indication that Customs has no authority to impute the "put up for retail sale" requirement in the definition of "ensemble" to the definition of suits.

As a result, whether sets of garments which are not packed together in such a manner that they are readily identifiable as suits at the time of importation are classifiable as suits as such depends on the intent of the importer. If, at the time of importation, the importer has the bona fide intention to sell the suit components as suits, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary, is classifiable as suits. If, at the time of importation, the importer has bona fide intention to sell the suit components separately, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary is classified as separates. If information is received that the garments are merchandised in a manner not consonant with the entered classification under 19 U.S.C. 1592 may of course be appropriate.

You cite a previous Customs ruling in which apparent "suits" were classified as separates because the components were sold as separates and were listed on documentation as indicating *different sizes and quantities. Based on the above analysis, it is clear that the cited ruling may be distinguished from the information you have provided. In this case the importer orders (PO and foreign invoices) its suits as suits, matched by size and color. They are shipped as units. The separate display reflects the greater flexibility in choice given to the consumer who requires jackets and bottoms of different sizes. Moreover, the garments are principally sold and used as units, despite their separate display. The jacket and bottom are designed and intended to go together and are primarily sold and worn by consumers as suits. The applicable subheading for the style 122 will be 6204.11.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Women's or Girls' Suits * * * Of wool or fine animal hair. The duty rate will be 16.4 percent ad valorem.

When imported separately, the applicable subheading for the jacket of (style 8505) will be 6204.31.1010, Harmonized Tariff Schedule of the United States (HTS), which provides for Women's or Girls' * * * Suit-type jackets and blazers * * * Of wool or fine animal hair: Women's. The duty rate will be 7.5 percent ad valorem.

The suit (Style 122) falls within textile category designation 444. The jacket, when imported separately, falls within category 435. Based upon international textile trade agreements products of China, Thailand, Sri Lanka and/or Indonesia are subject to a visa requirement and quota restraints.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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 Patricia Schiazano at (212) 466-5866.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY B83511
April 23, 1997
CLA-2-62:RR:NC:TA:360 B83511
CATEGORY: Classification
TARIFF NO.: 6204.11.0000;
6204.31.2010; 6204.51.0010

MR. ROBERT T. STACK
SIEGEL, MANDELL & DAVIDSON, P.C.
One Astor Place
1515 Broadway - 43rd Floor
New York, NY 10036-8901

RE: The tariff classification of women's suits from Taiwan

DEAR MR. STACK:

In your letter dated March 20, 1997, you requested a classification ruling on behalf of Liz Claiborne, Inc. The submitted samples will be returned to you under separate cover.

Style 30750431/30750411 consists of a women's jacket and skirt constructed from 62% wool, 20% rayon, 13% nylon and 5% acetate woven fabric. Both garments are lined with 100 percent acetate woven fabric. The tailored jacket (designated as 30750431) has eight panels, with two of the front panels and two of the back panels extending from the shoulder seam to the bottom of the jacket, while the various side panels extend from the sleeve openings to the bottom of the jacket. The jacket features long sleeves without cuffs, a notched portrait collar, a full front opening with four buttons for closure and two pockets with flaps below the waist. The skirt designated as 30750411, has a zippered rear closure with an inner button tab closure. It is your contention that the goods meet the tariff and commercial definition for suits; the garments imported under the combined style 30750431/30750411 are sold together to retailers in matching quantities and are properly dutiable as suits. However, due to innovative retail sale practices, the consumer will be able to match different sizes or purchase garments individually. You suggest that Customs might perceive a problem in classifying the garments as suits under these circumstances. You present the following information concerning the importation of the goods. the importer is purchasing style 30750431/30750411 as a suit that will be designated by the joint style number on the company's orders and import invoice documentation. the jackets will match the skirts in fabric, size, color and composition. the suits will be imported with each jacket and matching skirt on separate hangers that are attached. Each individual garment will be covered by a poybag and the suit will be covered by another polybag. The hangers for the garments will be detachable. style 30750431/30750411, is being sold by the importer as a set of garments to the buyers for retail stores. the buyers are purchasing equal numbers of jackets and skirts, with each jacket and skirt in matching size and color. the importer anticipates that some retailers will hang the garments together in the manner imported, while others will split the jackets and skirts and merchandise them in adjacent displays. The jackets and skirts will be individually ticketed for sale, whether hung together or hung separately. although the garments are clearly designed to be worn together, due to the patterning of the fabric design, consumers will be able to purchase jackets and skirts in different sizes for fit considerations, or even as individual pieces. in light of the consumer's ability to match different sizes or purchase one jacket or one skirt individually, certain buyers have indicated a desire to purchase additional quantities of either jackets or skirts. if the importer makes such quantities available separately, this will involve separate purchase orders for the individual pieces, importation of any extra pieces as individual items and sale of the extra garments to the stores as individual pieces not shipped with matching articles.

Chapter 62 note 3 sets out the requirements for suits. In part, the note states that the term suit means a set of garments composed of two or three pieces made up *** in identical fabric and comprising: one suit coat or jacket *** consisting of four or more panels designed to cover the upper part of the body *** and one garment designed to cover the lower part of the body *** All of the components of a suit must be of the same fabric construction, style, color and composition; they must also be of the same style and of corresponding or compatible size.

Both garments in this case are constructed from identical woven fabric and color, and they are of the same composition.

Because they are ordered and shipped as a unit (equal numbers) they are of corresponding or compatible size. Accordingly, by virtue of note 3(a) to Chapter 62, the garments meet the requirements for classification as a suit.

It should be noted that each of the definitions in Chapter 62 for suits refer to a "set of garments", without limitation. In comparison, Note 3(b) which defines the term "ensemble" specifically requires that an ensemble be "put up for retail sale". The silence of the suit definition in this area when compared to the express requirements contained in the ensemble definitions is a clear indication that Customs has no authority to impute the "put up for retail sale" requirement in the definition of "ensemble" to the definition of suits.

As a result, whether sets of garments which are not packed together in such a manner that they are readily identifiable as suits at the time of importation are classifiable as suits depends on the intent of the importer. If, at the time of importation, the importer has the bona fide intention to sell the suit components as suits, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary, is classifiable as suits. If, at the time of importation, the importer has bona fide intention to sell the suit components separately, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary is classified as separates. If information is received that the garments are merchandised in a manner not consonant with the entered classification under 19 U.S.C. 1592 may of course be appropriate.

In this case, the importer orders (P.O. and foreign invoices) its suits as suits, matched by size and color. They are shipped as a unit. Moreover, the garments are principally sold and used as a unit, despite the possibility of their separate display. The jacket and bottom are designed and intended to go together and are primarily sold and worn by consumers as suits. The applicable subheading for style 30750431/30750411 will be 6204.11.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Women's or Girls' Suits *** Of wool or fine animal hair. The duty rate will be 16.4 percent ad valorem.

When imported separately, the applicable subheading for the jacket (style 30750431) will be 6204.31.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for Women's or Girls' *** Suit-type jackets and blazers *** Of wool or fine animal hair: Other: Women's. The duty rate will be 32.4 cents/kg plus 20 percent ad valorem.

When imported separately, the applicable subheading for the skirt (style 30750411) will be 6204.51.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for Women's or Girls' *** skirts *** Of wool or fine animal hair: Women's. The duty rate will be 16.1 percent ad valorem.

The suit (style 30750431/30750411) falls within textile category designation 444. The jacket, when imported separately, falls within category 435 and the skirt within category 442.

Based upon international textile trade agreements products of Taiwan are subject to a visa requirement and quota restraints.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on

Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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 Patricia Schiazano at (212) 466-5866.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
March 23, 2000
CLA-2-62:RR:NC:TA: 360 F83145
CATEGORY: Classification
TARIFF NO.: 6204.19.2000; 6204.69.2510

MS. REBECCA CHEUNG
ANN TAYLOR, INC.
1372 Broadway
New York, NY 10018

RE: The tariff classification of women's suits and pants from Hong Kong or China

DEAR MS. CHEUNG:

In your letter dated February 17, 2000, you requested a classification ruling. The sample submitted with your request will be returned to you under separate cover.

The submitted garments, designated as style numbers 51-41630 (jacket) and 52-41757 (pants), constitute a women's suit constructed from 64% acetate and 36% polyester woven fabric. Both garments are fully lined. The jacket is constructed from eight panels sewn together lengthwise and features long hemmed sleeves, lapels, shoulder pads, two besom pockets below the waist and a full front opening secured by two buttons. The pants feature a hook-and-eye closure on the waist and a zippered placket in the center.

Although the garments are individually marked with separate style numbers, it is your intention to sell the garments as suits. You question how your marketing strategy will be perceived by Customs and have provided the following information: the importer will purchase styles 51-41630 and 52-41757 as a suit, i.e., in equal numbers with each jacket and pant matching in fabric, size, color and composition; the garments will be sold as a set of garments in retail stores; the garments will be designated by separate style numbers on the company's purchase orders and cross-referenced. the garments will be designated as a suit on import invoice documentation; the garments will be shipped together in the same container in equal numbers of matching tops and bottoms, matched to size, and will be allocated and shipped to stores in a 1 to 1 ratio, matched to size; the garments will not be displayed together on a single hanger but will be displayed separately in adjacent locations; although the garments are clearly designed to be worn together, consumers will be able to purchase jackets and pants in different sizes for fit considerations; the jackets and pants will be individually ticketed for sale and will each component will be marked with country of origin and other information required by the Federal Trade Commission; in light of the consumer's ability to match different sizes, additional quantities of the pants may be required; if additional or separate quantities of the pants are re-

quired, a separate purchase order will be provided; the additional pieces may be imported either with the suits or separately.

Chapter 62 note 3 sets out the requirements for suits. In part, the note states that the term suit means a set of garments composed of two or three pieces made up *** in identical fabric and comprising: one suit coat or jacket *** consisting of four or more panels designed to cover the upper part of the body *** and one garment designed to cover the lower part of the body *** All of the components of a suit must be of the same fabric construction, style, color and composition; they must also be of the same style and of corresponding or compatible size.

Both garments in this case are constructed from identical woven fabric and color, and they are of the same composition. Because they are ordered and shipped as a unit (equal numbers) they are of corresponding or compatible size. Accordingly, by virtue of note 3(a) to Chapter 62, the garments meet the requirements for classification as a suit.

It should be noted that each of the definitions in Chapter 62 for suits refer to a "set of garments", without limitation. In comparison, Note 3(b) which defines the term "ensemble" specifically requires that an ensemble be "put up for retail sale". The silence of the suit definition in this area when compared to the express requirements contained in the ensemble definitions is a clear indication that Customs has no authority to impute the "put up for retail sale" requirement in the definition of "ensemble" to the definition of suits.

As a result, whether sets of garments which are not packed together in such a manner that they are readily identifiable as suits at the time of importation are classifiable as suits depends on the intent of the importer. If, at the time of importation, the importer has the bona fide intention to sell the suit components as suits, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary, is classifiable as suits. If, at the time of importation, the importer has bona fide intention to sell the suit components separately, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary is classified as separates. If information is received that the garments are merchandised in a manner not consonant with the entered classification under 19 U.S.C. § 1592 may of course be appropriate.

In this case, the importer orders (P.O. and foreign invoices) its suits as suits, matched by size and color. They are shipped as a unit. Moreover, the garments are principally sold and used as a unit, despite the possibility of their separate display. The jacket and bottom are designed and intended to go together and are primarily sold and worn by consumers as suits.

The applicable subheading for styles 51-41630 (jacket) and 52-41757 (pants) will be 6204.19.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's woven suits of artificial fibers. The duty rate will be 36.2cents/kg +26.5 percent ad valorem.

When imported separately or imported in the same shipment as a separate entity, the applicable subheading for style 52-41757 (pants) will be 6204.69.2510, Harmonized Tariff Schedule of the United States (HTS), which provides for women's woven trousers of artificial fibers. The duty rate will be 29.3 percent ad valorem.

Styles 51-41630 (jacket) and 52-41757 (pants) fall within textile category designation 644; when imported separately or imported in the same shipment as a separate entity, style 52-41757 (pants) falls within textile category designation 648. Based upon international textile trade agreements products of Hong Kong or China are subject to quota restraints and a visa requirement.

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

subject merchandise may be affected and should also be verified at the time of shipment.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia Schiazano at 212-637-7080.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY F83716
April 11, 2000
CLA-2-62:RR:NC:TA: 360 F83716
CATEGORY: Classification
TARIFF NO.: 6204.13.2010; 6204.33.5010; 6204.63.3510;
6204.19.2000; 6204.39.3010; 6204.69.2510

MS. REBECCA CHEUNG
ANN TAYLOR, INC.
1372 Broadway
New York, NY 10018

RE: The tariff classification of women's suits and jackets and pants from China

DEAR MS. CHEUNG:

In your letter dated March 3, 2000, you requested a classification ruling. The samples submitted with your request will be returned to you under separate cover.

Two styles of women's suits were submitted with your request. The submitted garments, designated as style numbers, 49-43692 (jacket) and 49-40149 (pants), constitute a women's suit constructed from 100% polyester woven fabric. Both garments are fully lined. The jacket is constructed from six panels sewn together lengthwise and features long hemmed sleeves, a collar with lapels, a four button front closure, shoulder pads and two pockets below the waist. The pants have a side zipper opening and two pockets.

The submitted garments, designated as style numbers 49-40348 (jacket) and 49-40351 (pants), constitute a women's suit constructed from 71% acetate and 29% polyester woven fabric. Both garments are fully lined. The jacket is constructed from eight panels sewn together lengthwise and features long hemmed sleeves, lapels, shoulder pads, two besom pockets below the waist and a full front opening secured by five buttons. The pants feature a hook-and-eye closure on the waist and a zippered placket in the center. The garments will also be imported in petite sizes under style numbers 56-43726 and 56-43727. Although the garments are individually marked with separate style numbers, it is your intention to sell the garments as suits. You question how your marketing strategy will be perceived by Customs and have provided the following information: the importer will purchase styles 51-41630 and 52-41757 as a suit, i.e., in equal numbers with each jacket and pant matching in fabric, size, color and composition; the garments will be sold as a set of garments in retail stores; the garments will be designated by separate style numbers on the company's purchase orders and cross-referenced. the garments will be designated as a suit on import invoice documentation; the garments will be shipped together in the same container in equal numbers of matching tops and bottoms, matched to size, and will be allocated and

shipped to stores in a 1 to 1 ratio, matched to size; the garments will not be displayed together on a single hanger but will be displayed separately in adjacent locations; although the garments are clearly designed to be worn together, consumers will be able to purchase jackets and pants in different sizes for fit considerations; the jackets and pants will be individually ticketed for sale and will each component will be marked with country of origin and other information required by the Federal Trade Commission; in light of the consumer's ability to match different sizes, additional quantities of the components may be required; if additional or separate quantities of the components are required, a separate purchase order will be provided; the additional pieces may be imported either with the suits or separately.

Chapter 62 note 3 sets out the requirements for suits. In part, the note states that the term suit means a set of garments composed of two or three pieces made up of four or more panels designed to cover the upper part of the body and one garment designed to cover the lower part of the body. All of the components of a suit must be of the same fabric construction, style, color and composition; they must also be of the same style and of corresponding or compatible size.

The garments in this case are constructed from identical woven fabric and color, and they are of the same composition. Because they are ordered and shipped as a unit (equal numbers) they are of corresponding or compatible size. Accordingly, by virtue of note 3(a) to Chapter 62, the garments meet the requirements for classification as a suit.

It should be noted that each of the definitions in Chapter 62 for suits refer to a "set of garments", without limitation. In comparison, Note 3(b) which defines the term "ensemble" specifically requires that an ensemble be "put up for retail sale". The silence of the suit definition in this area when compared to the express requirements contained in the ensemble definitions is a clear indication that Customs has no authority to impute the "put up for retail sale" requirement in the definition of "ensemble" to the definition of suits.

As a result, whether sets of garments which are not packed together in such a manner that they are readily identifiable as suits at the time of importation are classifiable as suits depends on the intent of the importer. If, at the time of importation, the importer has the bona fide intention to sell the suit components as suits, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary, is classifiable as suits. If, at the time of importation, the importer has bona fide intention to sell the suit components separately, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary is classified as separates. If information is received that the garments are merchandised in a manner not consonant with the entered classification under 19 U.S.C. § 1592 may of course be appropriate.

In this case, the importer orders (P.O. and foreign invoices) its suits as suits, matched by size and color. They are shipped as a unit. Moreover, the garments are principally sold and used as a unit, despite the possibility of their separate display. The jacket and bottom are designed and intended to go together and are primarily sold and worn by consumers as suits.

The applicable subheading for styles 49-43692 (jacket) and 49-40149 (pants) will be 6204.13.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's woven suits of synthetic fibers. The duty rate will be 36.2cents/kg +26.5 percent ad valorem.

When imported separately or imported in the same shipment as a separate entity, the applicable subheading for style 49-43692 (jacket) will be 6204.33.5010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's woven suit-type jackets of synthetic fibers. The duty rate will be 28 percent ad valorem.

When imported separately or imported in the same shipment as a separate entity, the applicable subheading for style 49-40149 (pants) will be 6204.63.3510, Harmonized Tariff Schedule of the United States (HTS), which provides for women's woven trousers of synthetic fibers. The duty rate will be 29.3 percent ad valorem.

The applicable subheading for styles 49-40348 (jacket) and 49-40351 (pants) will be 6204.19.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's woven suits of artificial fibers. The duty rate will be 36.2cents/kg +26.5 percent ad valorem.

When imported separately or imported in the same shipment as a separate entity, the applicable subheading for style 49-40348 (jacket) will be 6204.39.3010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's woven suit-type jackets of artificial fibers. The duty rate will be 28 percent ad valorem.

When imported separately or imported in the same shipment as a separate entity, the applicable subheading for style 49-40351 (pants) will be 6204.69.2510, Harmonized Tariff Schedule of the United States (HTS), which provides for women's woven trousers of artificial fibers. The duty rate will be 29.3 percent ad valorem.

Styles styles 49-40348 (jacket) and 49-40351 (pants) and styles 49-43692 (jacket) and 49-40149 (pants) fall within textile category designation 644; when imported separately or imported in the same shipment as a separate entity, styles 49-40351 (pants) and 49-40149 (pants) fall within textile category designation 648; when imported separately or imported in the same shipment as a separate entity, style 49-40348 (jacket) and 49-43692 (jacket) fall within category designation 635. Based upon international textile trade agreements products of China are subject to quota restraints and a visa requirement.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia Schiazano at 212-637-7080.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY F83799
April 17, 2000
CLA-2-62:RR:NC:TA: 360 F83799
CATEGORY: Classification
TARIFF NO.: 6204.19.2000;
6204.59.3010; 6204.69.2510

MS. REBECCA CHEUNG
ANN TAYLOR, INC.
1372 Broadway
New York, NY 10018

RE: The tariff classification of women's suits; pants and skirts from China or Hong Kong

DEAR MS. CHEUNG:

In your letter dated March 16, 2000, you requested a classification ruling. The samples submitted with your request will be returned to you under separate cover.

You have submitted a three-piece grouping consisting of a jacket (style number 49-40124) a skirt (style number 49-40126) and pants (style number 49-40126). The garments are constructed from 47 percent rayon, 41 percent polyester and 12 percent twill woven fabric and are fully lined. The jacket is constructed from more than four panels sewn together lengthwise and features long hemmed sleeves with button trim, a collar and lapels, shoulder pads, two pockets below the waist and a full front opening secured by four buttons. The skirt features two front pockets and a side zipper closure. The pants feature a full lining, two front pockets and a side zipper closure. These garments will also be imported in petite sizes under style numbers 56-43706, 56-43708 and 56-43710.

Although the garments are individually marked with separate style numbers, it is your intention to sell the garments as suits. You question how your marketing strategy will be perceived by Customs and have provided the following information: the importer will purchase styles 49-40124 and 49-40126 or 49-40124 and 49-40128 as a suit, i.e., in equal numbers with each jacket and skirt and jacket and pants matching in fabric, size, color and composition; the garments will be sold as a set of garments in retail stores: the garments will be designated by separate style numbers on the company's purchase orders and cross-referenced. the garments will be shipped together in the same container in equal numbers of matching tops and bottoms, matched to size, and will be allocated and shipped to stores in a 1 to 1 ratio, matched to size; the garments will not be displayed together on a single hanger but will be displayed separately in adjacent locations; although the garments are clearly designed to be worn together, consumers will be able to purchase jackets, skirts and pants in different sizes for fit considerations; the jackets, skirts and pants will be individually ticketed for sale and each component will be marked the country of origin and other information required by the Federal Trade Commission; in light of the consumer's ability to match different sizes, additional quantities of the skirts or pants may be required; if additional or separate quantities of the skirts or pants are required, a separate purchase order will be provided; the additional pieces may be imported either with the suits or separately.

Chapter 62 note 3(a) sets out the requirements for suits. In part, the note states that the term suit means a set of garments composed of two or three pieces made up *** in identical fabric and comprising: one suit coat or jacket *** consisting of four or more panels designed to cover the upper part of the body *** and one garment designed to cover the lower part of the body *** All of the components of a suits must be of the same fabric construction, style color and composition; they must also be of the same style and of corresponding or compatible size.

The garments in this case are constructed from identical woven fabric and color, and they are of the same composition. Because they are ordered and shipped as a unit (equal numbers) they are of corresponding or compatible size. Accordingly, by virtue of note 3(a) to Chapter 62, the garments meet the requirements for classification as a suit.

It should be noted that each of the definitions in Chapter 62 for suits refer to a "set of garments", without limitation. In comparison, Note 3(b) which defines the term "ensemble" specifically requires that an ensemble be "put up for retail sale". The silence of the suit definition in this area when compared to the express requirements contained in the ensemble definitions is a clear indication that Customs has no authority to impute the "put up for retail sale" requirement in the definition of "ensemble" to the definition of suits.

As a result, whether sets of garments which are not packed together in such a manner that they are identifiable as suits at the time of importation are classifiable as suits depends upon the intent of the importer. If, at the time of importation, the importer has the bona fide intention to sell the suit components as suits, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary, is classifiable as suits. If, at the time of importation, the importer has bona fide intention to sell the suit components separately, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary is classified as separates. If information is received that the garments are merchandised in a manner not consonant with the entered classification under 19 U.S.C. 1592 may of course be appropriate.

In this case, the importer orders (P.O. and foreign invoices) its suits as suits, matched by size and color. They are shipped as a unit. Moreover, the garments are principally sold and used as a unit, despite the possibility of their separate display. The jacket and skirt are designed and intended to go together and are primarily sold and worn by consumers as suits.

You further question if you have the option of classifying the jacket and pants as the suit if they are imported together and classifying the skirt individually. Chapter 62 note 3 (a) further provides:

If several individual components to cover the lower part of the body area presented together (for example, two pairs of trousers or trousers and shorts, or a skirt or divided skirt and trousers), the constituent lower part shall be one pair of trousers, or, in the case of women's or girls' suits, the skirt or divided skirt, the other garments being considered separately.

If all three garments are imported together, the garments constituting the suit will be the jacket and skirt; the pants will be separately classifiable. The jacket and pants also meet the suit definition, and if imported separately will constitute a suit. The additional pieces if imported separately or in unmatched quantities will be classified separately.

The applicable subheading for styles 49-40124 (jacket) and 49-40128 (skirt) will be 6204.19.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): suits: of other textile materials: of artificial fibers: other. The applicable rate of duty will be 36.2 cents/kg + 26.5 percent ad valorem.

The applicable subheading for styles 49-40124 (jacket) and 49-40126 (pants) will be 6204.19.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): suits: of other textile materials: of artificial fibers: other. The duty rate will be 36.2 cents/kg + 26.5 percent ad valorem.

When imported separately or imported in the same shipment as a separate entity, the applicable subheading for style 49-40126 (skirt) will be 6204.59.3010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): skirts and divided

skirts: of other textile materials: of artificial fibers: other: other: women's. The duty rate will be 16.4 percent ad valorem.

When imported separately or imported in the same shipment as a separate entity, the applicable subheading for style 49-40128 (pants) will be 6204.69.2510, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): trousers, bib and brace overalls, breeches and shorts: of other textile materials: of artificial fibers: trousers, breeches and shorts: other: trousers and breeches: women's. The duty rate will be 29.3 percent ad valorem.

Styles 41-40124 (jacket) and 49-40128 (skirt) and styles 49-40124 (jacket) and 49-40126 (pants) fall within textile category designation 644. When imported separately or imported in the same shipment as a separate entity, style 49-40128 (skirt) falls within textile category designation 642 and style 49-40126 (pants) falls within textile category designation 648. Based upon international textile trade agreements products of China and Hong Kong are subject to quota restraints and a visa requirement.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia Schiazano at 212-637-7080.

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

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY F83800
April 17, 2000
CLA-2-62:RR:NC:TA: 360 F83800
CATEGORY: Classification
TARIFF NO.: 6204.13.2010; 6204.53.3010

MS. REBECCA CHEUNG
ANN TAYLOR, INC.
1372 Broadway
New York, NY 10018

RE: The tariff classification of women's suits and skirts from China or Hong Kong

DEAR MS. CHEUNG:

In your letter dated March 16, 2000, you requested a classification ruling. The samples submitted with your request will be returned to you under separate cover.

The submitted garments, designated as style numbers 49-40151 (jacket) and 49-40152 (skirt), constitute a woman's suit constructed from 97 percent polyester and 3

percent rayon woven fabric. Both garments are fully lined. The jacket is constructed from eight panels sewn together lengthwise and features long hemmed sleeves with button trim, a collar and lapels, shoulder pads, two beson pockets below the waist and a full front opening secured by three buttons. The skirt features a back vent and a back zipper closure.

Although the garments are individually marked with separate style numbers, it is your intention to sell the garments as suits. You question how your marketing strategy will be perceived by Customs and have provided the following information: the importer will purchase styles 49-40151 and 49-40152 as a suit, i.e., in equal numbers with each jacket and skirt matching in fabric, size, color and composition; the garments will be sold as a set of garments in retail stores: the garments will be designated by separate style numbers on the company's purchase orders and cross-referenced. the garments will be shipped together in the same container in equal numbers of matching tops and bottoms, matched to size, and will be allocated and shipped to stores in a 1 to 1 ratio, matched to size; the garments will not be displayed together on a single hanger but will be displayed separately in adjacent locations; although the garments are clearly designed to be worn together, consumers will be able to purchase jackets and skirts in different sizes for fit considerations; the jackets and skirts will be individually ticketed for sale and each component will be marked the country of origin and other information required by the Federal Trade Commission; in light of the consumer's ability to match different sizes, additional quantities of the skirts may be required; if additional or separate quantities of the skirts are required, a separate purchase order will be provided; the additional pieces may be imported either with the suits or separately.

Chapter 62 note 3 sets out the requirements for suits. In part, the note states that the term suit means a set of garments composed of two or three pieces made up *** in identical fabric and comprising: one suit coat or jacket *** consisting of four or more panels designed to cover the upper part of the body *** and one garment designed to cover the lower part of the body *** All of the components of a suits must be of the same fabric construction, style color and composition; they must also be of the same style and of corresponding or compatible size.

Both garments in this case are constructed from identical woven fabric and color, and they are of the same composition. Because they are ordered and shipped as a unit (equal numbers) they are of corresponding or compatible size. Accordingly, by virtue of note 3(a) to Chapter 62, the garments meet the requirements for classification as a suit.

It should be noted that each of the definitions in Chapter 62 for suits refer to a "set of garments", without limitation. In comparison, Note 3(b) which defines the term "ensemble" specifically requires that an ensemble be "put up for retail sale". The silence of the suit definition in this area when compared to the express requirements contained in the ensemble definitions is a clear indication that Customs has no authority to impute the "put up for retail sale" requirement in the definition of "ensemble" to the definition of suits.

As a result, whether sets of garments which are not packed together in such a manner that they are identifiable as suits at the time of importation are classifiable as suits depends upon the intent of the importer. If, at the time of importation, the importer has the bona fide intention to sell the suit components as suits, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary, is classifiable as suits. If, at the time of importation, the importer has bona fide intention to sell the suit components separately, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary is classified as separates. If information is received that the garments are merchandised in a manner not consonant with the entered classification under 19 U.S.C. 1592 may of course be appropriate.

In this case, the importer orders (P.O. and foreign invoices) its suits as suits, matched by size and color. They are shipped as a unit. Moreover, the garments are principally sold and used as a unit, despite the possibility of their separate display.

The jacket and skirt are designed and intended to go together and are primarily sold and worn by consumers as suits.

The applicable subheading for styles 49-40151 (jackets) and 49-40152 (skirt) will be 6204.13.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear); suits: of synthetic fibers: other: women's. The applicable rate of duty will be 36.2 cents/kg + 26.5 percent ad valorem.

When imported separately or imported in the same shipment as a separate entity, the applicable subheading for style 49-40152 (skirt) will be 6204.53.3010, Harmonized Tariff Schedule of the United States (HTS), which provides for women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear); skirts and divided skirts: of synthetic fibers: other: other: women's. The duty rate will be 16.4 percent ad valorem.

Styles 41-40151 (jacket) and 49-40152 (skirt) fall within textile category designation 644; when imported separately or imported in the same shipment as a separate entity, style 49-40152 (skirt) falls within textile category designation 642. Based upon international textile trade agreements products of China and Hong Kong are subject to quota restraints and a visa requirement.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Patricia Schiazzano at 212-637-7080.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 088423
May 20, 1991
CLA-2 CO:R:C:T 088423 HP
CATEGORY: Classification
TARIFF NO.: 6211.43.0040; 6211.43.0050

MS. SUSAN MORETTI
ATTORNEY IN FACT
TLR-TOTAL LOGISTICS RESOURCE, INC.
P. O. Box 30419
Portland, OR 97230

RE: Whether sets of garments which are not packed together in such a manner that they are readily identifiable as suits at the time of importation are classifiable as such depends upon the intent of the importer. Documentation; track suit; purchase order

DEAR MS. MORETTI:

This is in reply to your letter of November 21, 1990, concerning the tariff classification of shorts and track suits, produced in Malaysia or Hong Kong, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Please reference your client J.M. Associates, Inc. The shorts have been ruled upon by our New York office; please reference New York Ruling Letter (**NYRL**) **858700**.

FACTS:

The merchandise at issue consists of two combinations of unisex jackets and pants. The first, style Y306 jacket and style Y206 pants, consists of a jacket with a full front opening, a zipper extending to the top of the collar, zippered slant pockets at the waist, elasticized cuffs and waist, and a rear yoke extending more than halfway down the back and covering a mesh liner. The pants have an elasticized waist with no break, side seam pockets, and zippers extending half way up the leg from the elasticized cuffs. Both garments are constructed of 100% woven nylon. You state that these garments will be manufactured in different companies in Malaysia, then sent to a consolidator for shipment to the United States.

Although imported in equal quantities on the same ship, entered on the same entry, and sold as "sets" in the United States, the garments will be packaged separately at the time of importation. Purchase orders submitted with your request indicate that the tops and bottoms will each be pre-packed in cartons of thirty.

The second combination, style U900, consists of a jacket with a full front zippered opening, zippered, slant pockets at the waist, elasticized cuffs and waist, a drawstring at the waist, and a rear yoke extending more than half way down the back and covering a mesh liner. The trousers have zippers extending from the cuffs to the waist, have adjustable snap tabs at the waist, and are unlined. They are constructed of 100% woven nylon.

ISSUE:

Whether the combinations are considered track suits under the HTSUSA?

LAW AND ANALYSIS:

Style U900

In **HRL 087511** of January 14, 1991, we stated:

It is our opinion that "necessary changes in points of detail," from knitted track suits to woven, allow the presence of a liner with the ability to both breathe and to wick away perspiration.

Track suits with a woven outer shell and an inner lining capable of imparting the characteristics enumerated above are therefore classifiable in heading 6211, HTSUSA, as track suits.

Style U900, therefore, is clearly a track suit.

Styles Y306/Y206

Style Y306/Y206 is clearly constructed and designed as a track suit. However, as we state above: these garments will be manufactured in different companies in Malaysia, then sent to a consolidator for shipment to the United States. Although imported in equal quantities on the same ship, entered on the same entry, and sold as "sets" in the United States, the garments will be packaged separately at the time of importation. Purchase orders submitted with your request indicate that the tops and bottoms will each be pre-packed in cartons of thirty.

We must therefore decide whether a track suit, which is wearing apparel made up of, without exception, more than one component, may be classified as a track suit when those multiple components are separately packaged as described above.

At issue is whether this merchandise, upon entering the United States is to be classified based upon its "condition as imported," or how it is "put up for retail sale." Following the "condition as imported" principle, since the track suit components are not imported together, they must be classified as separates. The latter precept holds that since the components are said to be marketed as sets, "put up [together] for retail sale," the merchandise may be classified as a track suit. See **HRL 083458** of August 31, 1990 (Asana Yoga suit, shirt and pants primarily marketed and sold together (put up for retail sale), imported as one top and one bottom in polyurethane bag (condition as imported), classifiable as ensemble).

While it is undoubtedly true that the "retail sale" option places a heavy burden upon Customs field personnel, i.e., authenticating importers' claims as to how their merchandise will be sold, it is our opinion that allowing packaging to govern how wearing apparel which is invariably made up of more than one matching component is classified, e.g., track suits, suits, pajamas (see **HRL 088101** of February 26, 1991 ("garments fit the general description of typical men's pajama bottoms and should be classified as such, whether imported separately or with tops as sets [emphasis added])), has over-whelming potential for abuse. Therefore, whether sets of garments which are not packed together in such a manner that they are readily identifiable as suits at the time of importation are classifiable as such depends upon the intent of the importer. If, at the time of importation, the importer has bona fide intention to sell the suit components as suits, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary, is classifiable as suits. If, at the time of importation, the importer has bona fide intention to sell the suit components separately, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary, is classified as separates. If information is received that the garments are merchandised in a manner not consonant with the entered classification, action under 19 U.S.C 1592 may of course be appropriate.

* In the instant matter, your letter requests a binding ruling for, inter alia, a "track suit." In addition, the purchase orders submitted with your request describe 12,000 pieces of both jackets and pants, in corresponding sizes and colors. This, when combined with your statement that the garments will be sold as track suits, provides the justification for classification as such.

HOLDING:

As a result of the foregoing, the instant merchandise is classified as follows:

Track Suit Trousers

* * * under subheading 6211.43.0040, HTSUSA, textile category 648, as track suits, ski-suits and swimwear; other garments, other garments, women's or girls', of man-made fibers, track suits, trousers. The applicable rate of duty is 17 percent ad valorem.

Track Suit Jackets

* * * under subheading 6211.43.0050, HTSUSA, textile category 635, as track suits, ski-suits and swimwear; other garments, other garments, women's or girls', of man-made fibers, track suits, other. The applicable rate of duty is 17 percent ad valorem.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an issuance of the U.S. Customs Service, which is updated weekly and is available at your local Customs office.

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

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 952584
December 8, 1992
CLA-2 CO:R:C:T 952584 jb
CATEGORY: Classification
TARIFF NO.: 6112.41.0010

JAMES F. O'HARA
ESQUIRE STEIN SHOSTAK SHOSTAK & O'HARA
3580 Wilshire Boulevard
Los Angeles, CA 90010-2597

RE: Women's swimwear; classification based on bona fide intention of the importer at time of importation to sell components as a complete suit; 6112.41.0010, HTSUSA

DEAR MR. O'HARA:

This is in response to your letter dated August 10, 1992, on behalf of your client, Krystal K. International Inc., regarding the classification of women's swimsuits. Samples were provided to this office and will be returned under separate cover.

FACTS:

The subject swimwear are two-piece bikini swimsuits composed of 83 percent nylon and 17 percent spandex knit fabric. The outer shell of one piece is either the same color and pattern, or of a coordinated color and pattern, as a matching second piece. The swimsuits will be imported with the tops and bottoms separately packaged, but in identical quantities of coordinated tops and bottoms which will be sold as sets.

The three sample bottom pieces, designated with a (B) in the model number, are composed of knit nylon and spandex with a polyester lined front panel and crotch. The three sample top pieces, designated with a (T) in the model number, are also composed of nylon and spandex and have a front panel which covers the bosom. All are secured in the back with a one-inch square, clear, plastic fastener.

The three sample sets are as follows:

1. Model LS(B)000 and Model LS(T)000 the top is fashioned in a bandeau style
2. Model LS(B)001 and Model LS(T)001 the bottom piece is decorated with a ruffled panel of nylon and spandex; the top piece is a short crop tank-top style with lace-up detailing in the front
3. Model LS(B)002 and Model LS(T)002 the top is fashioned in a bandeau style

ISSUE:

Whether the submitted samples, which will be imported in identical quantities of separately packaged tops and bottoms of the same color or pattern coordinated, and sold as sets, are properly classifiable as women's swimwear, in subheading 6112.41.0010, HTSUSA?

LAW AND ANALYSIS:

Classification of merchandise under the HTSUSA is governed according to the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes, taken in order. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRI will be applied in the order of their appearance.

At issue is whether this merchandise, upon entering the United States, is to be classified based upon its condition as imported, i.e., either by separate packaging of the top and bottom pieces, or based upon the way in which it is to be put up for retail sale to the consumer, i.e., as a bikini set.

A similar issue was discussed in Customs Memorandum 085944, dated May 10, 1991, therein it was determined that:

As a result, whether sets of garments which are not packed together in such a manner that they are readily identifiable as suits at the time of importation are classifiable as such depends on the intent of the importer. If, at the time of importation, the importer has the bona fide intention to sell the suit components as suits, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary, is classifiable as suits. If, at the time of importation, the importer has the bona fide intention to sell the garment components separately, as evidenced by the documentation in the entry package, in the absence of evidence to the contrary, the garments are classifiable separately.

See also, **HQ 088423**, dated May 20, 1991.

The importer states that the separate packaging of the matching components enhances the marketability of the bathing suits, enabling the consumer to purchase the best fitting swimwear by selecting different sizes for the bikini top and bottom, as required. This statement serves to show the bona fide intention of the importer to sell the separately packaged components as sets, allowing the consumer to personally select the top and bottom combinations which will give the ideal fit.

Based upon this bona fide intent of the importer and the cited rulings, the merchandise is classified in subheading 6112.41.0010, HTSUSA, under the provision for women's swimwear.

HOLDING:

Assuming the requisite evidence of a bona fide intention to sell the merchandise as sets is present at the time of importation, the three sample sets, Model LS(B)000 and LS(T)000, Model LS(B)001 and LS(T)001, and Model LS(B)002 and LS(T)002, are classified under subheading 6112.41.0010, HTSUSA, which provides for women's knit swimwear of synthetic fabric containing by weight 5 percent or more elastomeric yarn or rubber thread. The applicable rate of duty is 26.5 percent ad valorem and the textile category is 659.

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

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

check the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT I]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 952704
February 1, 1993
CLA-2 CO:R:C:T 952704 jb
CATEGORY: Classification
TARIFF NO.: 6201.93.3510; 6203.43.4010

MR. ROB TARQUINIO
ROYTEX, INC.
16 East 34th Street
New York, NY 10016

RE: Modification of **PC 876238**; bona fide intention to sell components separately; separate classifications for jackets and trousers; subheadings 6201.93.3510 and 6203.43.4010, HTSUSA

DEAR MR. TARQUINIO:

This is in response to your letter, dated August 26, 1992, requesting modification of Pre-entry Classification Ruling (**PC**) **876238**, dated July 23, 1992, classifying several styles of jackets and trousers.

FACTS:

On July 23, 1992, our New York office issued you Pre-entry Classification Ruling (**PC**) **876238**, classifying several styles of jacket and trousers sets as woven track suits in heading 6211, HTSUSA. The merchandise at issue, referred to as Style numbers 290113, 290115, 290117 and 290121, consists of jackets and trousers with an inner lining of 65 percent polyester and 35 percent cotton, and an outer fabric of 100 percent Trilobal nylon, imported from Malaysia.

Since the issuance of that ruling, you state that those referenced style numbers are being packed, shipped and sold as separates.

ISSUE:

Whether the subject merchandise is classifiable as suits in heading 6211, HTSUSA, or as separates in headings 6201 and 6203, HTSUSA?

LAW AND ANALYSIS:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is in accordance with the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes, taken in order. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRI will be applied, in the order of their appearance.

In Headquarters Ruling (**HQ**) **088423**, dated May 20, 1991, regarding a similar issue, we stated:

Therefore, whether sets of garments which are not packed together in such a manner that they are readily identifiable as suits depends upon the intent of the importer. If, at the time of importation, the importer has bona fide intention to sell the suit components as suits, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary, is classifiable as suits. If, at the time of importation, the importer has bona fide intention to sell the suit compo-

nents separately, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary, is classified as separates. If information is received that the garments are merchandised in a manner not consonant with the entered classification, action under 19 U.S.C. section 1592 may of course be appropriate.

As you state that the subject merchandise is no longer being sold as sets, but are being packed, shipped and sold as separates, classification should reflect this change. Additionally, as there is no possible gain in claiming separate classification in this instance, we see no need to obtain further documentation.

HOLDING:

The subject merchandise, Style numbers 290113, 290115, 290117 and 290121, are classified to indicate separate classifications for the jackets and trousers. The jackets are classifiable in subheading 6201.93.3510, HTSUSA, which provides for other men's anoraks, windbreakers and similar articles of man-made fibers. The applicable rate of duty is 29.5 percent ad valorem and the quota category is 634.

The trousers are classifiable in subheading 6203.43.4010, which provides for other men's trousers of synthetic fibers. The applicable rate of duty is 29.7 percent ad valorem and the quota category is 647.

In order to ensure uniformity in Customs classification of this merchandise and eliminate uncertainty, pursuant to section 177.9(d)(1), Customs Regulations (19 CFR 177.9(d)(1)), PC **Ruling 876238** is modified to reflect the above classification effective with the date of this letter.

This modification is not retroactive. However PC **Ruling 876238** will not be valid for importations arriving in the United States after the date of this notice.

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

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT J]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 955519
April 15, 1994
CLA-2 CO:R:C:T 955519 CMR
CATEGORY: Classification
TARIFF NO: 6201.93.3510, 6203.43.4010

DISTRICT DIRECTOR
U.S. CUSTOMS SERVICE
4430 E. Adamo Suit 301
Tampa, Fla. 33605

RE: Application for Further Review of Protests Nos. 1803-92-100022 and 1803-93-100011; Requirement for AFR met at time filed

DEAR Ms. ZWICKER:

This is in response to the above cited protests, filed by Gibney, Anthony & Flaherty, on behalf of their client, against the classification by the Area Port Director, Jacksonville, Florida, of certain merchandise as jackets and pants as opposed to as track suits. Although protestant received two pre-classification rulings on the subject merchandise prior to importation, protestant has met the requirements under 19 CFR

174.24(c). This provision provides that a protestant shall be accorded further review when the decision against which the protest is filed:

Involves matters previously ruled upon by the Commissioner of Customs or his designee or by the Customs courts but facts are alleged or legal arguments presented which were not considered at the time of the original ruling. Protestant has submitted legal arguments not addressed in any previous Customs rulings regarding the classification of this or similar merchandise. A sample of the merchandise at issue was submitted.

FACTS:

The jacket of style 2204 is constructed of a 100 percent nylon woven fabric outershell, a 65 percent polyester/35 percent cotton knit jersey fabric lining in the body of the garment, and a 100 percent nylon woven fabric lining in the arms. The garment features long sleeves with elasticized cuffs, a 2-1/2 inch wide elasticized waistband, a full frontal opening secured by a zipper closure which extends to the end of the collar, a stand-up collar, and two front pockets at the waist.

The pants of style 2204 are constructed of a 100 percent nylon woven fabric outershell, a 65 percent polyester/35 percent cotton knit jersey fabric lining for the torso portion of the pants extending slightly down the legs portion, and a 100 percent nylon woven fabric lining the remaining legs portion of the pants. The pants feature an elasticized waistband with an enclosed drawstring for tightening, a zippered fly that does not extend through the waistband, and elasticized ankle cuffs with side zippers which extend about 9 inches up the outside of the legs.

The jacket and pants are color coordinated and each feature matching embroidered logos of a major league sports franchise.

Style 2204 was the subject of two pre-classification ruling letters—**PC 868293** of November 26, 1991, and **PC 873396** of May 4, 1992. PC 868293 (1991) indicated the classification for the jacket and pants of style 2204 as track suits components in subheadings 6211.33.0030, HTSUSA, and 6211.33.0035, HTSUSA, respectively (subject to duty at 17 percent ad valorem); but, further indicated if imported separately, the classifications would be subheadings 6201.93.3000, HTSUSA, and 6203.43.3500, HTSUSA, respectively, as water resistant garments (subject to duty at 7.6 percent ad valorem). In **PC 873396** (1992), classification for the jacket and pants of style 2204 is given as subheadings 6201.93.3000, HTSUSA, and 6203.43.3500, HTSUSA, respectively. This pre-classification ruling indicates that the garments are imported separately.

The garments at issue were entered as separates in the provision for water resistant garments, i.e., the jackets in subheading 6201.93.3000, HTSUSA, and the pants in subheading 6203.43.3500, HTSUSA. The garments were entered in four separate entries spanning a time period of approximately six weeks. Three entries are the subject of protest #1803-92-100022, and one entry is the subject of protest #1803-92-100011. Two entries contained only jackets, style 2204J; one entry contained only pants, style 2204P; and one entry contained an uneven number of jackets and pants, style 2204J (200) and style 2204P (1576).

The jackets and pants were liquidated as classified, in subheading 6201.93.3510, HTSUSA, dutiable at 29.5 percent ad valorem for the jackets, and in subheading 6203.43.4010, HTSUSA, dutiable at 29.7 percent ad valorem for the pants. Customs personnel determined the garments did not meet the water resistance requirements of Additional U.S. Note 2, Chapter 62, HTSUSA.

ISSUE:

Are the jackets and pants of style 2204, entered in separate shipments over a six week time span, classifiable as track suits of heading 6211, HTSUSA? Are the jackets and pants of style 2204, entered separately, classifiable as track suits of heading 6211 by application of General Rule of Interpretation 2?

LAW AND ANALYSIS:

As to the first issue, Customs has already addressed this issue in Headquarters Ruling Letter (**HRL**) **954270** of August 17, 1993, addressed to Gibney, Anthony & Flaherty. Although the ruling was issued to the firm on behalf of a different client,

counsel for protestant should be aware of this decision and already have a copy. We are enclosing a copy, however, for your reference.

HRL 954270 succinctly states Customs position in regard to the classification of track suit components shipped separately on different vessels, i.e., they are not classifiable as track suits, but are classified as separates—jackets or pants. As Customs has addressed this matter and the protestant does not raise any new legal arguments which have not already been addressed in **HRL 954270**, we will not entertain this issue further.

The protestant does raise a matter not previously addressed, i.e., whether by application of General Rule of Interpretation (GRI) 2, the components of a track suit may be classified as track suits based upon an analysis that they are “incomplete or unfinished”.

GRI 2 provides, in pertinent part:

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

The Explanatory Notes to the Harmonized Commodity Description and Coding System, recognized as the official interpretation of the tariff at the international level, defines track suits at 61.12 (the Explanatory Notes of heading 6112 apply *mutatis mutandis*, to heading 6211). Track suits, i.e., knitted articles consisting of two pieces, not lined but sometimes with a raised inner surface (nap) which, because of their general appearance and the nature of the fabric, are clearly meant to be worn exclusively or mainly in the pursuit of sporting activities.

Track suits consist of two garments, namely:

—A garment meant to cover the upper part of the body down to or slightly below the waist. It has long sleeves, with ribbed or elasticized bands, zip fasteners or other tightening elements at the cuffs. Similar tightening elements, including drawstrings, are generally to be found at the bottom of this garment. When it has a partial or complete opening at the front, it is generally fastened by means of a slide fastener (zipper). It may or may not be fitted with a hood, a collar and pockets.

—A second garment (a pair of trousers) which may be either close or loose fitting, with or without pockets, with an elasticated waistband, drawstring or other means of tightening at the waist, with no opening at the waist and therefore no buttons or other fastening system. However, such trousers may be fitted with ribbed or elasticated bands, slide fasteners (zippers) or other tightening elements at the bottom of the trouser-legs which generally go down to ankle level. They may or may not have footstraps.

The definition of track suits consistently refers to two garments. Protestant would have us view the single components, i.e., the jackets and pants of style 2204, as “complete or unfinished” track suits and by application of GRI 2(a), classify these garments as track suits.

While the jackets and pants, if presented together at the time of importation, would meet the above cited definition of track suits, a track suit, by definition, consists of two garments. The argument that the jackets and pants should be viewed as “incomplete or unfinished” track suits when presented separately at the time of importation is without merit. GRI 2(a) states that the incomplete or unfinished article must have the essential character of the complete or finished article. As track suits by definition consist of two garments, one garment cannot have the essential character of a track suit. In fact, in regard to the individual components, the jacket has the essential character of a jacket, and the pants have the essential character of pants. It is only when they are combined that they may possess the essential character of a track suit.

As to protestants specificity argument under GRI 3(a), we believe it is sufficient to state that failure to meet the definition of a track suit precludes classification as such

in heading 6211, and therefore, classification of the jackets in heading 6201, as anoraks, windbreakers or similar articles, and of the trousers in heading 6203 as trousers, are the most specific headings among those which merit consideration.

In regard to the one entry which contained an uneven number of jackets and pants (200 jackets, 1576 pants), we would not agree that allowance should be made for classification of 200 tracksuits by matching the jackets with appropriate pants in this shipment. This view is based upon the fact that the importer received two pre-classification rulings indicating classification of the merchandise imported separately, and the merchandise was then indeed entered as separates. The earlier of the two rulings, PC 868293 of November 26, 1991, does indicate a classification for the goods imported together, but notes a classification for separate importation.

Customs Service Decision 92-11, cited by protestant's counsel, dealt with track suits in which equal numbers of jackets and pants were separately packaged on the same ship and entered on the same entry. In such a situation, the decision stated that in absence of evidence to the contrary, Customs would look to the bona fide intent of the importer in regard to the manner of sale of the garments, i.e., as separates or as a set. This decision merely attempted to ascertain the true "condition as imported" of the merchandise at issue therein. It did not, by any means, eliminate the principal of classification based upon condition as imported. In this situation, while protestant maintains that style 2204 was ordered, purchased and sold as a set, i.e., a track suit, and has submitted documentation to that effect, it is our view that the importer was well aware of the significance of the "condition as imported" of the merchandise. As evidenced by protestant's counsel's submissions, 9845 jackets and 11761 pants were shipped. That is a difference of 1916 garments. Of the four entries at issue, only one contained jackets and pants and in vastly unequal numbers.

HOLDING:

Based upon the manner of entry of these garments and the pre-classification rulings on style 2204, imported separately, the protest should be denied in full. A copy of this decision should be attached to the Customs Form 19 which is returned to the protestant.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, this decision should be mailed by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Lexis, Freedom of Information Act and other public access channels.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT K]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 952907
January 29, 1993
CLA-2 CO:R:C:T 952907 HP
CATEGORY: Classification
TARIFF NO.: 6112.41.0010

MR. WILLIAM F. SULLIVAN
SPECIAL SERVICES MANAGER
MSAS CUSTOMS LOGISTICS, INC.
150-16 132nd Avenue
Jamaica, NY 11434

RE: Mix and match women's swimwear imported as separates. **HRL 952584** followed.

DEAR MR. SULLIVAN:

This is in reply to your letter of August 24, 1992. That letter concerned the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of ladies' swim suits, produced in Hong Kong. Please reference your client New Hampton, Inc., I.D. No. 13-3422220.

FACTS:

The merchandise at issue consists of women's mix and match swimwear. Seven knit samples were submitted, all composed of 80% nylon and 20% spandex. Style S93-804-24 is a bra top with a hook closure and detachable shoulder straps. Style S93-804-22 is a crop-like garment. Styles S93-804-21 and S93-804-19 are solid (different) colored bikini bottoms with gussets. Style S93-804-23 is a bra top with shoulder straps and strap closures. Style S93-804-20 is a bikini bottom with a waistband and gusset. The seventh sample, lacking a style number, is a crop-like top design. Styles -21, -19 and -23 match as to fabric and color. The seventh sample matches the multi-colored bottoms -19 and -20.

You state that the garments are mix and match swimwear which will be packaged separately, but sold at retail as swimsuits. The tops and bottoms will not be imported in equal numbers.

ISSUE:

Whether the mix and match garments are classifiable as swimwear or as separates under the HTSUSA?

LAW AND ANALYSIS:

In **HRL 952584** of December 8, 1992, we classified merchandise identical to the garments at issue, except that the mix and match tops and bottoms were imported in equal quantities. That ruling held that where the "bona fide intent of the importer [is] to sell the separately packaged components as sets," and that the separate packaging is to allow "the consumer to personally select the top and bottom combinations which will give the ideal fit," the merchandise is classifiable under heading 6112, HTSUSA, as women's swimwear. See also **HRL 088423** of May 20, 1991.

It is our opinion that to classify the instant merchandise differently from that in **HRL 952584** merely because this merchandise is imported in differing quantities is unwarranted. As opposed to Yoga Asana suit components, in which tops or bottoms are occasionally sold separately for replacement purposes, the components at issue are invariably sold as sets. See **HRL 083458** of August 31, 1990. Therefore, as in **HRL 952584**, classification as women's swimwear is appropriate.

HOLDING:

As a result of the foregoing, the instant merchandise is classified under subheading 6112.41.0010, HTSUSA, textile category 659, as women's swimwear of synthetic fibers. The applicable rate of duty is 26.5 percent ad valorem.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels), an issuance of the U.S. Customs Service, which is updated weekly and is available at your local Customs office.

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

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

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT L]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 953231
May 12, 1993
CLA-2 CO:R:C:T 953231 NLP
CATEGORY: Classification
TARIFF NO.: 6201.93.3510; 6203.43.4010

DISTRICT DIRECTOR
U.S. CUSTOMS SERVICE
300 South Ferry Street - Room 2017
Terminal Island
San Pedro, CA 90731

RE: Protest No. 2704-92-100134; track suits; jackets and trousers; garments packed separately and shipped together; headings 6201, 6203 and 6211; HRLs 085944, 088423 and 952805

DEAR SIR:

This is in response to Protest and Request for Further Review No. 2704-92-100134, dated January 8, 1992. At issue is the classification of two styles of jackets and one style of trousers under the Harmonized Tariff Schedule of the United States (HTSUS).

FACTS:

The imported merchandise consists of two styles of men's jackets and one style of men's trousers. Both the jackets, style "Venus-M-1" (Venus) and "Saturn M-32" (Saturn), are made of a woven nylon fabric and are lined. They have a full front opening, a zipper extending to the top of a stand up collar, back vertical vents, a pocket below the waistline and an embroidered logo. The color pattern for the Venus style is spruce/marigold/peacock and the color pattern for the Saturn style is spruce/peacock/marigold.

The trousers, "Pluto M-105" (Pluto), are also made of woven nylon fabric. They have an exposed elastic drawcord waist, zippered leg openings, a pocket below the waistline, side seam pockets and an embroidered logo. The trousers are unlined. The color of the trousers is spruce. 2400 jackets and 2400 trousers were imported in a single shipment, but they were packed separately. The breakdown of garment styles and sizes is as follows:

Small Medium Large X-Large Venus Jacket 98 360 468 266 Saturn Jacket 96 360 488 264 Pluto Trousers 276 792 883 449 In addition, the protestant submitted a page from the Puma catalogue depicting the Venus jacket and the Pluto pants. It states that the sizes available for the jacket range from S-XL and the jacket's wholesale price is \$22.00 and the suggested retail price is \$44.00. The trousers' size range from S-XL and the wholesale price is \$13.50 and the suggested retail price is \$27.00.

Upon liquidation, the jackets were classified in subheading 6201.93.3510, HTSUS, which provides for "[m]en'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: [a]noraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets): [o]f man-made fibers: [o]ther: [o]ther: [o]ther: [o]ther: [m]en's." The trousers were classified in subheading 6203.43.4010, HTSUS, which provides for "[m]en's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear): [t]rousers * * *: [o]f synthetic fibers: [o]ther: [o]ther: [o]ther: [o]ther: [o]ther: [t]rousers and breeches: [m]en's."

It is the protestant's argument that the jackets and trousers are mix and match track suits and are classified in heading 6211, HTSUS. Specifically, the jackets are classified in subheading 6211.33.0035, HTSUS, which provides for "[t]rack suits, ski-suits and swimwear; other garments: [o]ther garments, men's or boys: [o]f man-made fibers: [t]rack suits: [o]ther." The trousers are classified in subheading 6211.33.0030, HTSUS, which provides for "[t]rack suits, ski-suits and swimwear; other garments: [o]ther garments, men's or boys: [o]f man-made fibers: [t]rack suits: [t]rousers."

ISSUE:

Whether the jackets and trouser should be classified as track suits in subheadings 6211.33.0035, HTSUS, and 6211.33.0030, HTSUS, respectively, or whether they are classifiable individually as separates in subheadings 6201.93.3510, HTSUS and 6203.43.4010, respectively?

LAW AND ANALYSIS:

The classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's), 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. 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's may be applied, taken in order.

Customs has determined in Headquarters Ruling Letter (**HRL**) **085944**, dated May 10, 1991, that track suits are not required to be packed together at the time of importation, on the same hanger or even in the same container in order to be classified together under their applicable provisions. Customs further stated that sets of garments that are not packed together at the time of importation are classifiable as suits where, at the time of importation, the importer has the bona fide intention to sell the suit components as suits, as evidenced by documentation in the entry package. For example, in **HRL 088423**, dated May 20, 1991, Customs dealt with the classification of two combinations of unisex jackets and pants that were imported in equal quantity on the same ship and sold as sets in the U.S., but were packaged separately on importation. Customs held those garments to be track suits based on purchase orders describing equal quantities of both jackets and pants, in corresponding sizes and colors, and the statement that the garments were to be sold as sets.

It is the protestant's argument that the entry documentation submitted indicates that the subject garments are intended to be sold as track suits. In support of this position, the protestant states that equal numbers of pants and jackets (2400 of each) were imported and the pants and jackets are composed of the same fabric in coordinating colors. In addition, the submitted catalogue pages clearly demonstrate that a customer is given 16 jackets which correspond with 12 pants within the "planet" group of garments. Therefore, a buyer is permitted to order one of four Venus or Saturn style jackets with any of the Pluto pants. Each retailer is sold complete sets of pants and jackets.

It is our position that the requisite intent is the physical manifestation, evidenced in the way in which the articles are sold. For example, in **HRL 952805**, dated January 26, 1993, Customs dealt with the classification of a woven cotton pajama top and sleep shorts, which were packaged separately and shipped together. They were individually tagged and priced and it was stated that the intent was to promote the sale of the coordinated two piece set. Customs classified these garments separately stating "if they are to be sold as a pajama set, the two components should be tagged and priced as a set and not individual components thereof."

Based on the information in front of us, the subject garments are not intended to be sold as suits. The catalogue states both wholesale and retail prices for the Venus jacket and Pluto pants. This suggests that the retailer intends to permit the customer a number of options in mixing and matching the various components and in buying the garments separately. If the garments are to be sold as a track suit, the two components should be tagged and priced as a set and not individual components thereof. Moreover, though it is undisputed that there is an equal amount of jackets and trousers in the shipment, there is within given sizes an unequal number of units. This information indicates that the subject jackets and trousers are not sold as suits and, as a result, the garments should be classified separately.

HOLDING:

The Venus and Saturn jackets are classifiable in subheading 6201.93.3510, HTSUS. The Pluto pants are classifiable in subheading 6203.43.4010, HTSUS.

The protest is denied. A copy of this decision should be attached to the Customs Form 19 and provided to the protestant as part of the notice of action on the protest.

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

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

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT M]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 956298
March 9, 1995
CLA-2: CO:R:C:T 956298 OR
CATEGORY: Classification
TARIFF NO.: 6201.93.3511; 6203.43.4010

DISTRICT DIRECTOR OF CUSTOMS
33 New Montgomery Street
San Francisco, CA. 94105-4510

RE: Further Review of Protest No. 2809-93-102031, Concerning the Tariff Status of Track Suit Components Invoiced and Packaged Separately

DEAR SIR:

This concerns the above referenced protest. Further review was requested by the protestant and granted by your office. Our decision on the matter follows.

FACTS:

The merchandise in question consists of jackets and pants. When imported, 2880 warm up pants were packed separately from 5040 warm up jackets. Separate entry summaries were filed for each type of garment. The importer states that this was the result of an inadvertent error on the part of the importer's broker. Although the protest mentions samples, no samples were received in this office. For the purposes of this ruling, we will assume that the subject garments have all the characteristics associated with track suits.

ISSUE:

All the goods were liquidated as entered, the pants under the provision for men's trousers of synthetic fibers, in subheading 6203.43.4010, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), with duty at the rate of 29.5 percent ad valorem, and the jackets under the provision for men's anoraks, windbreakers, and similar garments, of synthetic fibers, in subheading 6201.93.3511, HTSUSA, with duty at the rate of 29.3 percent ad valorem. The importer claims that all the pants (2880 pairs) should have been classified with an equal number (2880) of the jackets as track suits—the jackets in subheading 6211.43.0050, HTSUSA, and the pants in 6211.43.0040. The duty applicable to both pants and jackets is 16.9 percent ad valorem. Since those two tariff provisions are for women's and girls' track suits and the documentation refers to the garments as men's and boys', we assume that the protestant meant subheadings 6211.33.0050 and 6211.33.0040, respectively. In this instance, the rate of duty is the same.

LAW AND ANALYSIS:

Imported goods are classifiable according to the General Rules of Interpretation (GRI's) of the Harmonized Tariff Schedule of the United States (HTSUSA). GRI 1 provides that for legal purposes, classification shall be determined according to the terms of the headings in the tariff and according to any pertinent section or chapter notes. It appears that GRI 1 governs the classification of the subject merchandise. It is a cardinal rule of Customs law that goods are classified according to their condition at the time of importation. Prior to January 1, 1989, under the Tariff Schedules of the United States Annotated (TSUSA), track suit components imported in the same shipment, invoiced and packaged separately, were classified under the legal theory of "entireties" as track suits unless the components were intended for sale as separates. *Altman & Co. v. United States*, 13 Ct. Cust. Appls. 315, T.D.

41232 (1925); *James G. Wiley v. United States*, 56 Cust. Ct. 331, C.D. 2645 (1966). Therefore, Customs was required to determine how the garments were merchandised.

Under the HTSUSA, the judicially created principle of "entireties" which existed under the TSUSA, as it relates to garments, is specifically forbidden by Note 13 to Section XI, HTSUSA, which provides:

Unless the context requires otherwise, textile garments of different headings are to be classified in their own headings even if put in up sets for retail sale.

However, since there exists headings specifically providing for track suits, two piece garments sets which are determined to be track suits are classifiable pursuant to GRI 1 and are not subject to the requirements of Note 13. Therefore, track suits are not required to be packaged together at the time of importation, or even in the same container, in order to be classified together under a heading or subheading which provides for track suits.

Where sets of garments are not packed together in such a manner that they are readily identifiable as track suits at the time of importation, the classification of those garments depends on the intent of importer. As Customs stated in Customs Headquarters Ruling (HQ) 088423, dated May 20, 1991:

If, at the time of importation, the importer has bona fide intention to sell the suit components as suits, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary, is classifiable as suits. If, at the time of importation, the importer has the bona fide intention to sell the suit components separately, as evidenced by the documentation in the entry package, then the merchandise, in the absence of evidence to the contrary, is classified as separates.

In the instant circumstance, while the garments in question physically may qualify as track suits, they were packaged separately, invoiced separately, and entered by the importer's agent separately. The only evidence submitted to Customs that the 2880 pants and 2880 jackets will be marketed as track suits and not as separates are statements in the protest to that effect. Protestant has furnished a portion of a catalogue showing the warm-up jacket and warm-up pants pictured on the same page. The jackets are stated to come in four different color combinations, each one having its own separate style or order number. The pants also stated to come in the same four color combinations and, as with the jackets, each has its own style or order number. There is nothing on the submitted page which indicates that the pants and jackets are sold together as "track suits". Accordingly, the information furnished is insufficient to show that the importer intended at the time of importation to merchandise the 2880 pants with 2880 of the jackets as track suits.

HOLDING:

All the entry documents indicate that the garments were imported, and intended to be sold, as separates and there is no adequate information or evidence to indicate a contrary intent. Therefore, the merchandise was properly classified as separates and not as track suits. Accordingly, the protest should be denied in full.

In accordance with section 3A(11)(b) of Customs Directive Number 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, this decision should be attached to the Customs Form 19, Notice of Action, and furnished to the protestant no later than 60 days from the date of this letter. On that date the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Ruling Module in ACS and to the public via the Diskette Subscription Service, Freedom of Information Act, and other public access channels.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT N]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965923
CLA-2 RR:CR:TE 965923 TF
CATEGORY: Classification
TARIFF NO.: 6204.13.2010; 6204.19.2000; 6204.33.5010;
6204.63.3510; 6204.39.3010; 6204.69.2510

Ms. REBECCA CHEUNG,
ANN TAYLOR, INC.
1372 Broadway
New York, NY 10018

RE: Classification of women's suit-type jackets and matching pants and skirts; Imported in Equal Numbers; Classification Based on Condition at the Time of Importation; Classification Based on the Intent of Importer

DEAR Ms. CHEUNG:

Pursuant to your classification requests, Customs issued *four* New York Ruling Letters ("NY"), NY F83800 dated April 17, 2000, NY F83799 dated April 17, 2000, NY F83716 dated April 11, 2000, NY F83145 dated March 23, 2000, to your company. These rulings pertained to the tariff classification of various women's suits, jackets, pants and skirts. Upon review, the Bureau of Customs and Border Protection (CBP) has determined that the classification is correct, however the analysis applied to reach the classification determination is incorrect. This ruling letter sets forth the cor-

rect classification determination based on the articles condition as imported rather than the intent of the importer.

NY F83800, NY F83799, NY F83716 and NY F83145 are hereby modified for the reasons set forth below.

FACTS:

In each of the four rulings, you questioned how your marketing strategy would be perceived by Customs and you provided the following information:

- the importer will purchase styles as a suit, i.e., in equal numbers with each jacket and skirt or pants matching in fabric, size, color and composition;
- the garments will be sold as a set in retail stores;
- the garments will be designated by separate style numbers on the company's purchase orders and cross-referenced;
- the garments will be shipped together in the same container in equal numbers of matching tops and bottoms, matched to size, and will be allocated and shipped to stores in a 1 to 1 ratio, matched to size;
- the garments will not be displayed together on a single hanger but will be displayed separately in adjacent locations;
- although the garments are clearly designed to be worn together, consumers will be able to purchase individual pieces of jackets, skirts or pants in different sizes for fit considerations;
- the jackets and skirts or pants will be individually ticketed for sale and each component will be marked with the country of origin;
- if additional or separate quantities of the individual pieces are required, a separate purchase order will be provided;
- the additional pieces may be imported either with the suits or separately.

Suit 1 was originally the subject of NY F83800 dated April 17, 2000. Suit 1 is designated as style numbers 49-40151 (jacket) and 49-40152 (skirt) which constitute a woman's skirt suit constructed from 97 percent polyester and 3 percent rayon woven fabric. Both garments are fully lined. The jacket is constructed from eight panels sewn together lengthwise and features long hemmed sleeves with button trim, a collar and lapels, shoulder pads, two besom pockets below the waist and a full front opening secured by three buttons. The skirt features a back vent and a back zipper closure. The garments are individually marked with separate style numbers and sold as a suit in retail stores.

Suit 2 was originally the subject of NY F83799 dated April 17, 2000. Suit 2 is designated as a three-piece grouping consisting of a jacket (style number 49-40124), a skirt (style number 49-40126) and pants (style number 49-40126). The garments are constructed from 47 percent rayon, 41 percent polyester and 12 percent twill woven fabric and are fully lined. The jacket is constructed from more than four panels sewn together lengthwise and features long hemmed sleeves with button trim, a collar and lapels, shoulder pads, two pockets below the waist and a full front opening secured by four buttons. The skirt features two front pockets and a side zipper closure. The pants feature a full lining, two front pockets and a side zipper closure. These garments will also be imported in petite sizes under style numbers 56-43706, 56-43708 and 56-43710

Suits 3 and 4 were originally subjects of NY F83716 dated April 11, 2000. Both are women's pants suits. Suit 3 is designated as style numbers, 49-43692 (jacket) and 49-40149 (pants), and constitutes a women's pantsuit constructed from 100% polyester woven fabric. Both garments are fully lined. The jacket is constructed from six panels sewn together lengthwise and features long hemmed sleeves, a collar with lapels, a four button front closure, shoulder pads and two pockets below the waist. The pants have a side zipper opening and two pockets. Suit 4 is designated as style numbers 49-40348 (jacket) and 49-40351 (pants) and constitutes a woman's pantsuit constructed from 71% acetate and 29% polyester woven fabric. Both garments are fully lined. The jacket is constructed from eight panels sewn together lengthwise and features long hemmed sleeves, lapels, shoulder pads, two besom pockets below the waist and a full front opening secured by five buttons. The pants feature a hook-and-eye closure on

the waist and a zippered placket in the center. The garments will also be imported in petite sizes under style numbers 56-43726 and 56-43727.

Suit 5 was originally the subject of NY F83145 dated March 23, 2000. It is designated as style numbers 51-41630 (jacket) and 52-41757 (pants), and constitutes a women's suit constructed from 64% acetate and 36% polyester woven fabric. Both garments are fully lined. The jacket is constructed from eight panels sewn together lengthwise and features long hemmed sleeves, lapels, shoulder pads, two besom pockets below the waist and a full front opening secured by two buttons. The pants feature a hook-and-eye closure on the waist and a zippered placket in the center.

ISSUE:

What is the proper classification of the subject suits under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

LAW AND ANALYSIS:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Chapter 62 provides for articles of apparel and clothing accessories, not knitted or crocheted. Note 3(a) to Chapter 62, HTSUSA, defines the term "suit" as a set of garments composed of two or three pieces made up, in respect of their outer surface, in identical fabric and comprising:

- one suit coat or jacket the outer shell of which, exclusive of sleeves, consists of four or more panels, designed to cover the upper part of the body, possibly with a tailored waistcoat in addition whose front is made from the same fabric as the outer surface of the other components of the set and whose back is made from the same fabric as the lining of the suit coat or jacket; and
- one garment designed to cover the lower part of the body and consisting of trousers, breeches or shorts (other than swimwear), a skirt or a divided skirt, having neither braces nor bibs.

All of the suit components must be of the same fabric construction, color and composition; they must also be of the same style and of corresponding or compatible size.

Women's suits are provided *eo nomine* in heading 6204 and are classifiable pursuant to GRI 1, HTSUSA. Unlike "sets", which are provided within GRI 3(b), suits are not required to be "put up for retail sale." Further, Note 3(a) to Chapter 62 does not require that suit components be put up for retail sale. Rather, in order for suit components to be classifiable as suits of heading 6204 (pursuant to Note 3(a)), the suit components are required at the time of importation to be present together in the same shipment in equal amounts, but need not be packed together.

In this instance, the samples of the four rulings at issue are packed together in the same shipment within the same container in equal numbers of matching tops and bottoms. Therefore, they meet the terms of Note 3(a) to Chapter 62. Further, Customs has clearly articulated its view of how suits are to be classified in HQ 962125, dated May 5, 2000. In HQ 962125, Customs clarified that when matching suit jackets and bottoms, which meet the chapter note definition of suits are imported in the same shipment (in equal numbers and in the same size range), the garments are to be classified as suits based on their condition as imported. It is also stated that the intent of the importer is not determinative of classification.

This ruling serves to apply HQ 962125, by determining that the subject articles, when imported together in equal quantities that are matched by size and color, meet the tariff definition of suits as provided by Note 3 of Chapter 62 and are classified in

heading 6204 as provided by GRI 1, rather than applying the intent of the importer. In this instance, the subject suits, based upon the submitted facts, meet the terms of Note 3(a) to Chapter 62 to be classified as suits.

Therefore, we are modifying the four rulings' reference to the intent of the importer as this has no bearing on the classification determination and we are classifying the merchandise based on their condition as imported in heading 6204, HTSUSA, which provides for women's suits. For further details, we refer you to HQ 962125, which is enclosed.

HOLDING:

The following four rulings are hereby modified with regard to classification based on the intent of the importer:

- NY F83800, dated April 17, 2000
- NY F83799, dated April 17, 2000
- NY F83716, dated April 11, 2000
- NY F83145, dated March 23, 2000

In these aforementioned rulings, we find the analysis portion that pertains to the classification based on the intent of the importer to be incorrect. Rather the classification analysis should be based upon the merchandise's condition as imported. We refer you to the respective rulings for the appropriate classification within the Tariff.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT O]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965932
CLA-2 RR:CR:TE 965932 TF
CATEGORY: Classification
TARIFF NO.: 6211.33.0030; 6211.33.0035

MR. ROB TARQUINIO
ROYTEX, INC.
16 East 34th Street,
New York, NY 10016

RE: Revocation of HQ 952704; Classification of track suits; Imported in Equal Numbers; Classification Based on Condition at the Time of Importation, Classification Based on the Intended Manner of Sale; HQ 962125

DEAR MR. TARQUINIO:

Customs previously issued PC 876238, dated July 23, 1992, which originally classified certain styles of jackets and trousers sets as woven track suits in heading 6211, HTSUSA. Pursuant to your request for modification of PC 876238, Customs issued Headquarters Ruling Letter (HQ) 952704, dated February 1, 1993 and subsequently reclassified the merchandise as separates in subheadings 6201.93.3510 and 6203.43.4010, HTSUSA.

Upon review, the Bureau of Customs and Border Protection (CBP) has determined that this classification is incorrect.

HQ 952704 is hereby revoked for the reasons set forth below.

FACTS:

The merchandise of HQ 952704, dated February 1, 1993, is described as four styles of men's jacket and trousers sets that are designated as style numbers 290113, 290115, 290117, and 290121. These four styles consist of jackets and trousers that are each composed of an inner lining of 65 percent polyester, 35 percent cotton and an

outer shell of 100 percent Trilobal nylon. The jacket and trouser sets are imported from Malaysia.

PC 876238, dated July 23, 1992 classified the goods as track suits of heading 6211, HTSUSA. HQ 952704 modified PC 876238 and reclassified the goods separately in subheading 6201.93.3510, HTSUSA, which provides for other men's anoraks, windbreakers and similar articles of man-made fibers, and subheading 6203.43.4010, HTSUSA, which provides for other men's trousers of synthetic fibers. The classification determination was based on the intent of the importer to sell the components as separates.

ISSUE:

What is the proper classification of the four styles of merchandise within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

LAW AND ANALYSIS:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Woven track suits are provided *eo nomine* in heading 6211, HTSUSA. EN 62.11 states, in pertinent part, that "the provisions of the Explanatory Note to heading 61.12 concerning track suits * * * and of the Explanatory Note to heading 61.14 concerning other garments apply, *mutatis mutandis*, to the articles of this heading." We refer to EN 61.12 which describes track suits as consisting of two garments, namely:

—A garment meant to cover the upper part of the body down to or slightly below the waist. It has long sleeves, with ribbed or elasticated bands, zip fasteners or other tightening elements at the cuffs. Similar tightening elements, including drawstrings, are generally to be found at the bottom of this garment. When it has a partial or complete opening at the front, it is generally fastened by means of a slide fastener (zipper). It may or may not be fitted with a hood, a collar and pockets.

—A second garment (a pair of trousers) which may be either close or loose fitting, with or without pockets, with an elasticated waistband, drawstring or other means of tightening at the waist, with no opening at the waist and therefore no buttons or other fastening system. However, such trousers may be fitted with ribbed or elasticated bands, slide fasteners (zippers) or other tightening elements at the bottom of the trouser-legs which generally go down to ankle level. They may or may not have footstraps.

Track suits are classifiable based on GRI 1. As such, track suit components that form sets are not required to be "put up for retail sale" under GRI 3(b). In order for the subject track suit components to be classifiable within heading 6211, HTSUSA, as track suits based on their condition as imported, they should be packed in the same shipment at the time of importation, but not necessarily on the same hanger or in the same container. See Headquarters Ruling (HQ) 962125, dated May 5, 2000, referencing the following: Headquarters Memorandum 085944 PR, dated May 10, 1991; HQ 088423, dated May 20, 1991; HQ 952584, dated December 8, 1992; HQ 952907, dated January 29, 1993; HQ 952704, dated February 1, 1993; HQ 953231, dated May 12, 1993; HQ 954270, dated August 17, 1993; HQ 955519, dated April 15, 1994; HQ 956298, dated March 9, 1995.

In this instance, the subject track suit components are shipped in the same shipment, but separately packaged. The subject track suit components are provided *eo nomine* in heading 6211, HTSUSA. Further, we refer you to HQ 962125, dated May 5,

2000, which is listed above. In HQ 962125, Customs expressed the view that classification is based on the merchandise's condition as imported rather than the intent of the importer. Id. (clarifying that matching suit jackets and bottoms are classifiable as suits based on their condition as imported if they are imported in equal numbers in the same size range and meet the chapter note definition of suits.)

This ruling serves to apply HQ 962125, by determining that the subject track suit components are classifiable within heading 6211 (based on their condition as imported), if they are imported together in equal quantities that are matched by size, and if they are constructed and designed to be used exclusively or mainly for athletic activities.¹

In this instance, we find the subject track suit components are classifiable in heading 6211, HTSUSA, based on their condition as imported. The modification of the classification of the garments in PC 876238 was based on a change in the intent of the importer. Therefore, we are revoking the reference in HQ 952704 to the intent of the importer as this has no bearing on the classification determination and we are classifying the merchandise based on their condition as imported in heading 6211, HTSUSA, which provides for track suits. For further details, we refer you to HQ 962125, which is enclosed.

HOLDING:

HQ 952704, dated February 1, 1993, is hereby revoked.

The subject trousers are classifiable in subheading 6211.33.0030, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys': Of man-made fibers: Track suits: Trousers." The general column one duty rate is 16.1 percent *ad valorem* and the quota category is 647.

The subject jackets are classifiable in subheading 6211.33.0035, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys': Of man-made fibers: Track suits: Other." The general column one duty rate is 16.1 percent *ad valorem* and the quota category is 634.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Textile Status Report for Absolute Quotas*, previously available on the Customs Electronic Bulletin Board (CEBB), which is available on the CPB website at www.customs.gov.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

¹ See HQ 962039 dated April 11, 2000 *citing to* HQ 950378, dated April 22, 1993 which classified garments with shoulder pads, metallic yarn and multicolored thread embroidery, metallic braided piping, beads, and textile and plastic overlays as a track suit in heading 6211, HTSUSA.

[ATTACHMENT P]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965933
CLA-2 RR:CR:TE 965933 TF
CATEGORY: Classification
TARIFF NO.: 6211.43.0040, 6201.43.0050

Ms. SUSAN MORETTI,
ATTORNEY IN FACT
TLR-TOTAL LOGISTICS RESOURCE, INC.
P.O. Box 30419,
Portland, OR 97230

RE: Modification of HQ 088423; Classification of unisex jackets and pants as track suits; Imported in equal numbers but separately packed; Classification Based on Condition at the Time of Importation, Classification Based on the Intended Manner of Sale; HQ 962125, dated May 5, 2000

DEAR Ms. MORETTI:

Pursuant to your classification requests, Customs issued Headquarters Ruling Letter (HQ) 088423, dated May 20, 1991, to your company. This ruling pertained to the tariff classification of certain unisex jackets and pants as track suits. Upon review, the Bureau of Customs and Border Protection (CBP) has determined that the classification is correct, however the analysis applied to reach the classification determination is incorrect. This ruling letter sets forth the correct classification determination based on the articles' condition as imported rather than the intended manner of sale as represented by the importer.

HQ 088423 is hereby modified for the reasons set forth below.

FACTS:

The merchandise at issue consists of two combinations of unisex jackets and pants. The first, style Y306 jacket and style Y206 pants, consists of a jacket with a full front opening, a zipper extending to the top of the collar, zippered slant pockets at the waist, elasticized cuffs and waist, and a rear yoke extending more than halfway down the back and covering a mesh liner. The pants have an elasticized waist with no break, side seam pockets, and zippers extending half way up the leg from the elasticized cuffs. Both garments are constructed of 100% woven nylon. You state that these garments will be manufactured in different companies in Malaysia, then sent to a consolidator for shipment to the United States.

Purchase orders submitted with your request indicate that the tops and bottoms are pre-packed separately in cartons of thirty in equal quantities within the same shipment. The tops and bottoms will be sold as "sets" in the United States.

The second combination, style U900, consists of a jacket with a full front zippered opening, zippered, slant pockets at the waist, elasticized cuffs and waist, a drawstring at the waist, and a rear yoke extending more than half way down the back and covering a mesh liner. The trousers have zippers extending from the cuffs to the waist, have adjustable snap tabs at the waist, and are unlined. They are constructed of 100% woven nylon.

ISSUE:

What is the proper classification of the merchandise within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

LAW AND ANALYSIS:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding Sys-

tem, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Woven track suits are provided *eo nomine* in heading 6211, HTSUSA. EN 62.11 states, in pertinent part, that “the provisions of the Explanatory Note to heading 61.12 concerning track suits * * * and of the Explanatory Note to heading 61.14 concerning other garments apply, *mutatis mutandis*, to the articles of this heading.” We refer to EN 61.12 which describes track suits as consisting of two garments, namely:

—A garment meant to cover the upper part of the body down to or slightly below the waist. It has long sleeves, with ribbed or elasticated bands, zip fasteners or other tightening elements at the cuffs. Similar tightening elements, including drawstrings, are generally to be found at the bottom of this garment. When it has a partial or complete opening at the front, it is generally fastened by means of a slide fastener (zipper). It may or may not be fitted with a hood, a collar and pockets.

—A second garment (a pair of trousers) which may be either close or loose fitting, with or without pockets, with an elasticated waistband, drawstring or other means of tightening at the waist, with no opening at the waist and therefore no buttons or other fastening system. However, such trousers may be fitted with ribbed or elasticated bands, slide fasteners (zippers) or other tightening elements at the bottom of the trouser-legs which generally go down to ankle level. They may or may not have footstraps.

Track suits are classifiable based on GRI 1. As such, track suit components that form sets are not required to be “put up for retail sale” under GRI 3(b). In order for the subject track suit components to be classifiable within heading 6211, HTSUSA, as track suits at the time of importation, they should be packed in the same shipment at the time of importation, but not necessarily on the same hanger or in the same container. See Headquarters Ruling (HQ) 962125, dated May 5, 2000, referencing the following: Headquarters Memorandum 085944 PR, dated May 10, 1991; HQ 088423, dated May 20, 1991; HQ 952584, dated December 8, 1992; HQ 952907, dated January 29, 1993; HQ 952704, dated February 1, 1993; HQ 953231, dated May 12, 1993; HQ 954270, dated August 17, 1993; HQ 955519, dated April 15, 1994; HQ 956298, dated March 9, 1995.

In this instance, the subject track suit components are shipped in the same shipment, but separately packaged. The subject track suit components are provided *eo nomine* in heading 6211, HTSUSA. Further, we refer you to HQ 962125, dated May 5, 2000, which is listed above. In HQ 962125, Customs expressed the view that classification is based on the merchandise’s condition as imported rather than the intent of the importer. *Id.* (clarifying that matching suit jackets and bottoms are classifiable as suits based on their condition as imported if they are imported in equal numbers in the same size range and meet the chapter note definition of suits.)

This ruling serves to apply HQ 962125, by determining that the subject track suit components are classifiable within heading 6211 (based on their condition as imported), if they are imported together in equal quantities that are matched by size, and if they are constructed and designed to be used exclusively or mainly for athletic activities.¹

Based on the submitted facts, as the subject track suit components are classifiable in heading 6211, HTSUSA, and since they are shipped together in the same shipment, we find them to be classifiable as track suits. Therefore, we are striking the reference in HQ 088423 to the intent of the importer as this has no bearing on the classification determination and we are classifying the merchandise based on their condition as im-

¹ See HQ 962039 dated April 11, 2000 *citing to* HQ 950378, dated April 22, 1993 which classified garments with shoulder pads, metallic yarn and multicolored thread embroidery, metallic braided piping, beads, and textile and plastic overlays as a track suit in heading 6211, HTSUSA.

ported in heading 6211, HTSUSA, which provides for track suits. For further details, we refer you to HQ 962125, which is enclosed.

HOLDING:

HQ 088423, dated May 20, 1991 is hereby modified with regard to the classification based on the intent of the importer.

The matching pants are classifiable in subheading 6211.43.0040, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers: Track suits: Trousers." The general column one duty rate is 16.1 percent *ad valorem* and the quota category is 648.

The matching jackets are classified in subheading 6211.43.0050, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers: Track suits: Other." The general column one duty rate is 16.1 percent *ad valorem* and the quota category is 635.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Textile Status Report for Absolute Quotas*, previously available on the Customs Electronic Bulletin Board (CEBB), which is available now on the CPB website at www.customs.gov.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT Q]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965934
CLA-2 RR:CR:TE 965934 TF
CATEGORY: Classification
TARIFF NO.: 6204.11.0000, 6204.31.2010; 6204.51.0010

MR. ROBERT T. STACK
SIEGEL, MANDELL & DAVIDSON, P.C.
One Astor Place
1515 Broadway - 43rd Floor
New York, NY 10036-8901

RE: Modification of NY B83511; Classification of Women's Suits; Separately Packed in Equal Quantities; Classification Based on the Intended Manner of Sale; HQ 962125, dated May 5, 2000

DEAR MR. STACK:

In your letter dated March 20, 1997, you requested a classification ruling on behalf of your client, Liz Claiborne, Inc. In response to your request, Customs issued NY B83511, dated April 23, 1997, which pertains to the tariff classification of certain women's suits.

Upon review, the Bureau of Customs and Border Protection (CBP) has determined that the analysis of NY B83511 is erroneous as the merchandise was classified based on the intent of the importer. This ruling letter sets forth the correct classification determination based on the articles' condition as imported.

NY B83511 is hereby modified for the reasons set forth below.

FACTS:

The facts about the merchandise at issue were taken from NY B83511:

- Style 30750431/30750411 consists of a women's jacket and skirt constructed from 62% wool, 20% rayon, 13% nylon and 5% acetate woven fabric. Both garments are lined with 100 percent acetate woven fabric. The tailored jacket (designated as 30750431) has eight panels, with two of the front panels and two of the back panels extending from the shoulder seam to the bottom of the jacket, while the various side panels extend from the sleeve openings to the bottom of the jacket. The jacket features long sleeves without cuffs, a notched portrait collar, a full front opening with four buttons for closure and two pockets with flaps below the waist. The skirt designated as 30750411, has a zippered rear closure with an inner button tab closure.
- It is your contention that the goods meet the tariff and commercial definition for suits; the garments imported under the combined style 30750431/30750411 are sold together to retailers in matching quantities and are properly dutiable as suits. However, due to innovative retail sale practices, the consumer will be able to match different sizes or purchase garments individually. You suggest that Customs might perceive a problem in classifying the garments as suits under these circumstances. You present the following information concerning the importation of the goods:
 1. The importer is purchasing style 30750431/30750411 as a suit that will be designated by the joint style number on the company's orders and import invoice documentation. The jackets will match the skirts in fabric, size, color and composition. The suits will be imported with each jacket and matching skirt on separate hangers that are attached. Each individual garment will be covered by a polybag and the suit will be covered by another polybag. The hangers for the garments will be detachable.
 2. Style 30750431/30750411, is being sold by the importer as a set of garments to the buyers for retail stores. The buyers are purchasing equal numbers of jackets and skirts, with each jacket and skirt in matching size and color. The importer anticipates that some retailers will hang the garments together in the manner imported, while others will split the jackets and skirts and merchandise them in adjacent displays. The jackets and skirts will be individually ticketed for sale, whether hung together or hung separately.
 3. Although the garments are clearly designed to be worn together, due to the patterning of the fabric design, consumers will be able to purchase jackets and skirts in different sizes for fit considerations, or even as individual pieces. In light of the consumer's ability to match different sizes or purchase one jacket or one skirt individually, certain buyers have indicated a desire to purchase additional quantities of either jackets or skirts. If the importer makes such quantities available separately, this will involve separate purchase orders for the individual pieces, importation of any extra pieces as individual items and sale of the extra garments to the stores as individual pieces not shipped with matching articles.

ISSUE:

What is the proper classification of the merchandise within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

LAW AND ANALYSIS:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level,

facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Chapter 62 provides for articles of apparel and clothing accessories, not knitted or crocheted. Note 3(a) to Chapter 62, HTSUSA, defines the term "suit" as a set of garments composed of two or three pieces made up, in respect of their outer surface, in identical fabric and comprising:

- one suit coat or jacket the outer shell of which, exclusive of sleeves, consists of four or more panels, designed to cover the upper part of the body, possibly with a tailored waistcoat in addition whose front is made from the same fabric as the outer surface of the other components of the set and whose back is made from the same fabric as the lining of the suit coat or jacket; and
- one garment designed to cover the lower part of the body and consisting of trousers, breeches or shorts (other than swimwear), a skirt or a divided skirt, having neither braces nor bibs.

All of the suit components must be of the same fabric construction, color and composition; they must also be of the same style and of corresponding or compatible size.

Women's suits are provided *eo nomine* in heading 6204 and are classifiable pursuant to GRI 1, HTSUSA. Unlike "sets", which are provided within GRI 3(b), suits are not required to be "put up for retail sale." Further, Note 3(a) to Chapter 62 does not require that suit components be put up for retail sale. Rather, in order for suit components to be classifiable as suits of heading 6204 (pursuant to Note 3(a)), the suit components are required at the time of importation to be present together in the same shipment in equal amounts, but need not be packed together.

In this instance, although the subject merchandise is imported together on separate hangers with each individual piece covered in polybags, this is not controlling as the goods meet the terms of Note 3(a) to Chapter 62. Further, Customs has clearly articulated its view of how suits are to be classified in HQ 962125, dated May 5, 2000. In HQ 962125, Customs clarified that when matching suit jackets and bottoms, which meet the chapter note definition of suits are imported in the same shipment (in equal numbers and in the same size range), the garments are to be classified as suits based on their condition as imported. It is also stated that the intent of the importer is irrelevant to the goods' classification.¹

This ruling serves to apply HQ 962125, by determining that the subject merchandise, when imported together in equal quantities, matched by size and color, meet the tariff definition of suits as provided by Note 3 of Chapter 62 and are classified in heading 6204 as provided by GRI 1. In this case, the equal number of matching suit jackets and skirts are classifiable as suits. Additionally, to the extent that NY B83511 relied on the intent of the importer to classify the goods, we find this ruling to be in error, and we are striking the reference to the intent of the importer in NY B83511 as this has no bearing on the classification determination.

In sum, we are modifying the reference in NY B83511 to the intent of the importer as this has no bearing on the classification determination and we are classifying the merchandise based on their condition as imported in heading 6204, HTSUSA, which provides for women's suits. For further details, we refer you to HQ 962125, which is enclosed.

HOLDING:

NY B83511, dated April 23, 1997 is hereby modified with regard to classification based on the intent of the importer.

In NY B83511, we find the analysis portion that pertains to the classification based on the intent of the importer to be incorrect. Rather the classification analysis should

¹ See Headquarters Ruling (HQ) 962125, dated May 5, 2000, which refers to C.S.D. 92-11 (which applies the appropriate analysis of classifying suit components) as follows:

Components of a set need not be packaged together at time of entry in order to be considered classifiable as a set, but all garments must be present in the entry and there must be an equal amount of components to make up the set in the shipment.

be based upon the merchandise's condition as imported. We refer you to NY B83511 for the appropriate classification within the Tariff.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT R]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965929
CLA-2 RR:CR:TE 965929 TF
CATEGORY: Classification
TARIFF NO.: 6211.33.0030, 6211.33.0035, 6201.93.3511

GEORGE R. TUTTLE, P.C.
THREE EMBARCADERO CENTER,
Suite 1160
San Francisco, CA 94111

RE: Revocation of HQ 956298; Protest No. 2809-93-102031; Classification of track suits; Imported in Unequal Numbers but Separately Packed, Invoiced & Entered; Classification Based on Condition at the Time of Importation, Classification Based on the Intended Manner of Sale; HQ 962125

DEAR MR. TUTTLE:

This letter is in reference to Headquarters Ruling Letter (HQ) 956298, dated March 9, 1995, which decided Protest Number 2809-93-102031, dated December 9, 1993, which was initiated by you on behalf of your client, WESOC, Inc., concerning the classification of certain merchandise as jackets and pants as opposed to track suits.

Upon review, the Bureau of Customs and Border Protection (CBP) has determined that the classification is incorrect. This ruling letter sets forth the correct classification determination based on the articles condition as imported rather than the intended manner of sale as represented by the importer.

HQ 956298 is hereby revoked for the reasons set forth below. Although a final determination of a protest pursuant to Customs Regulations cannot be modified or revoked as it is applicable only to the entries protested, this ruling serves to modify the legal principle applied in HQ 956298. Further, this revocation decision will be applicable to any unliquidated entries or future importations of similar merchandise.

FACTS:

The merchandise at issue consists of 2880 warm up pants and 5040 warm up jackets that were packed separately on the same ship and listed on separate entries. The importer claimed that the separate entries were made in error.

The importer further claimed that 2880 pairs of pants should have been classified with 2880 jackets in order to be classified as track suits in subheading 6211.33.0050, HTSUSA, (the jackets) and subheading 6211.33.0040, HTSUSA (the pants).

ISSUE:

What is the proper classification of the merchandise within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

LAW AND ANALYSIS:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The

Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Woven track suits are provided *eo nomine* in heading 6211, HTSUSA. EN 62.11 states, in pertinent part, that “the provisions of the Explanatory Note to heading 61.12 concerning track suits * * * and of the Explanatory Note to heading 61.14 concerning other garments apply, *mutatis mutandis*, to the articles of this heading.” We refer to EN 61.12 which describes track suits as consisting of two garments, namely:

—A garment meant to cover the upper part of the body down to or slightly below the waist. It has long sleeves, with ribbed or elasticated bands, zip fasteners or other tightening elements at the cuffs. Similar tightening elements, including drawstrings, are generally to be found at the bottom of this garment. When it has a partial or complete opening at the front, it is generally fastened by means of a slide fastener (zipper). It may or may not be fitted with a hood, a collar and pockets.

—A second garment (a pair of trousers) which may be either close or loose fitting, with or without pockets, with an elasticated waistband, drawstring or other means of tightening at the waist, with no opening at the waist and therefore no buttons or other fastening system. However, such trousers may be fitted with ribbed or elasticated bands, slide fasteners (zippers) or other tightening elements at the bottom of the trouser-legs which generally go down to ankle level. They may or may not have footstraps.

Track suits are classifiable based on GRI 1. As such, track suit components that form sets are not required to be “put up for retail sale” under GRI 3(b). In order for the subject track suit components to be classifiable within heading 6211, HTSUSA, they should be packed in the same shipment at the time of importation, but not necessarily on the same hanger or in the same container. See Headquarters Ruling (HQ) 962125, dated May 5, 2000, referencing the following: Headquarters Memorandum 085944 PR, dated May 10, 1991; HQ 088423, dated May 20, 1991; HQ 952584, dated December 8, 1992; HQ 952907, dated January 29, 1993; HQ 952704, dated February 1, 1993; HQ 953231, dated May 12, 1993; HQ 954270, dated August 17, 1993; HQ 955519, dated April 15, 1994; HQ 956298, dated March 9, 1995.

In this instance, 2880 track suit pants and 2880 track suit jackets were entered in the same shipment. The remaining 2160 track suit jackets were also entered from the same shipment without matching pants. We refer you to HQ 962125, dated May 5, 2000, which is listed above. In HQ 962125, Customs expressed the view that classification is based on the merchandise’s condition as imported rather than the intent of the importer. *Id.* (clarifying that matching suit jackets and bottoms are classifiable as suits based on their condition as imported if they are imported in equal numbers in the same size range and meet the chapter note definition of suits.)¹

This ruling serves to apply HQ 962125, by determining that the subject track suit components are classifiable within heading 6211 (based on their condition as im-

¹ It is also stated that the intent of the importer is not irrelevant to the classification. See Headquarters Ruling (HQ) 962125, referring to C.S.D. 92-11 (which applies the appropriate analysis of classifying track suit components) as follows:

Components of a set need not be packaged together at time of entry in order to be considered classifiable as a set, but all garments must be present in the entry and there must be an equal amount of components to make up the set in the shipment. Therefore, if the instant goods contained the general characteristics of a track suit and were not coated, the classification outcome would be as follows: * * * if the goods were shipped separately on different vessels, they would not be classifiable as a set; if the instant goods were shipped on the same vessel, listed on the entry, and not packaged as a set, with an equal amount of trousers and jackets, they would be classifiable as a set [emphasis added]; and if the instant goods were shipped on the same vessel, listed on the entry, packaged separately, with an unequal amount of trousers and jackets, the extra components would be classifiable as separates [emphasis added]. This rationale is premised on the fact that the EN require two garments to make up a track suit. Therefore, in the case of unequal shipments, the extra components are classifiable separately because it takes two components to make a track suit. In the case of shipments of one component, the lone component is not classifiable as a track suit.

ported), if they are imported together in equal quantities that are matched by size, and if they are constructed and designed to be used exclusively or mainly for athletic activities.²

Based on the submitted facts, as the subject track suit components are shipped together in the same shipment, we find an equal number of pants and jackets are classifiable as track suits as follows:

- 2880 of the subject trousers are classifiable in subheading 6211.33.0030, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys': Of man-made fibers: Track suits: Trousers."
- 2880 of the subject jackets are classified in subheading 6211.33.0035, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys': Of man-made fibers: Track suits: Other."

The remaining track suit jackets are classified separately as entered in subheading 6201.93.3511, HTSUSA, which provides in general for men's outerwear jackets.

In sum, we are striking the reference in HQ 956298 to the intent of the importer as this has no bearing on the classification determination and we are classifying the merchandise based on its condition as imported. For further details, we refer you to HQ 962125, which is enclosed.

HOLDING:

HQ 956298, dated March 9, 1995, is hereby revoked.

The matching track suit pants and jackets (which are entered in equal quantities) are classifiable as tracksuits. The matching pants are classifiable in subheading 6211.33.0030, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys': Of man-made fibers: Track suits: Trousers."

The matching jackets are classified in subheading 6211.33.0035, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys': Of man-made fibers: Track suits: Other."

The remaining jackets which lack matching pants are classified separately as entered in subheading 6201.93.3511, 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 man-made fibers: Other: Other: Other: Other, Men's."

MYLES B. HARMON,
Director,
Commercial Rulings Division.

cc: District Director of Customs
33 New Montgomery Street
San Francisco, CA 94105-4510

² See HQ 962039 dated April 11, 2000 citing to HQ 950378, dated April 22, 1993, which classified garments with shoulder pads, metallic yarn and multicolored thread embroidery, metallic braided piping, beads, and textile and plastic overlays as a track suit in heading 6211, HTSUSA.

[ATTACHMENT S]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965930
CLA-2 RR:CR:TE 965930 TF
CATEGORY: Classification
TARIFF NO.: 6211.33.0030; 6211.33.0035; 6203.43.4010

JOHN A. BESSICH, Esq.
FOLLIK & BESSICH, P.C.
33 Walt Whitman Road, Suite 204,
Huntington Station, New York 11746

RE: Modification of HQ 955519; Classification of men's anorak jackets and pants as separates; Imported in unequal numbers in separate shipments over time; Classification Based on the Intended Manner of Sale; Classification based on condition as imported; HQ 962125

DEAR MR. BESSICH:

This letter is in reference to Headquarters Ruling Letter (HQ) 955519, dated April 15, 1994, which decided Protest Number 1803-92-100022, dated March 27, 1992, which was initiated by you concerning the classification of certain merchandise as jackets and pants as opposed to as track suits.

In HQ 955519, one entry of separates which contained an uneven number of men's anorak jackets and pants, designated as style 2204J (200) and style 2204P (1576) was classified separately as jackets and pants by Customs. Upon review, the Bureau of Customs and Border Protection has determined that entry at issue was erroneously classified based on the intended manner of sale as represented by the importer, rather than the condition of the merchandise as imported.

We have reviewed the classification decision with regard to the respective entry referenced above and determined that the conclusion in HQ 955519 concerning that entry was incorrect. Although, a final determination of a protest, pursuant to Customs Regulations, cannot be modified or revoked as it is applicable only to the entry protested, this ruling serves to change the legal principle as applied to the one entry identified in HQ 955519. Further, this modification decision will be applicable to any unliquidated entries or future importations of similar merchandise.

FACTS:

The entry at issue was composed of an uneven number of jackets and pants (200 jackets, 1576 pants), designated as styles 2204J (200) and style 2204P (1576).

The facts of HQ 955519 describes the merchandise as follows:

- The jacket is constructed of a 100 percent nylon woven fabric outershell, a 65 percent polyester/35 percent cotton knit jersey fabric lining in the body of the garment, and a 100 percent nylon woven fabric lining in the arms. The garment features long sleeves with elasticized cuffs, a 2-1/2 inch wide elasticized waistband, a full frontal opening secured by a zipper closure which extends to the end of the collar, a stand-up collar, and two front pockets at the waist.
- The pants of style 2204 are constructed of a 100 percent nylon woven fabric outershell, a 65 percent polyester/35 percent cotton knit jersey fabric lining for the torso portion of the pants extending slightly down the legs portion, and a 100 percent nylon woven fabric lining the remaining legs portion of the pants. The pants feature an elasticized waistband with an enclosed drawstring for tightening, a zippered fly that does not extend through the waistband, and elasticized ankle cuffs with side zippers which extend about 9 inches up the outside of the legs.
- The garments are color coordinated and each feature matching embroidered logos of a major league sports franchise.

The entry at issue was the subject of HQ 955519, dated April 15, 1994, which was an Application for Further Review of Protest No. 1803-92-100022 and 1803-92-

100011. It was also the subject of two previous pre-classification rulings—PC 868293 of November 26, 1991, and PC 873396 of May 4, 1992.

PC 868293 classified the jacket and pants (designated as style 2204) as track suits components in subheadings 6211.33.0030, HTSUSA, and 6211.33.0035, HTSUSA); and if imported separately as water resistant garments in subheadings 6201.93.3000, HTSUSA, and 6203.43.3500, HTSUSA. In PC 873396, Customs classified the goods in subheadings 6201.93.3000, HTSUSA, and 6203.43.3500, HTSUSA, respectively. PC 873396 indicated the garments were imported separately.

In HQ 955519, Customs denied the protest and classified the entry at issue based upon the intent of the importer in accordance with the pre-classification ruling, which was as separates.

ISSUE:

What is the proper classification of the merchandise within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

LAW AND ANALYSIS:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (“GRIs”). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Woven track suits are provided *eo nomine* in heading 6211, HTSUSA. EN 62.11 states, in pertinent part, that “the provisions of the Explanatory Note to heading 61.12 concerning track suits * * * and of the Explanatory Note to heading 61.14 concerning other garments apply, *mutatis mutandis*, to the articles of this heading.” We refer to EN 61.12 which describes track suits as consisting of two garments, namely:

—A garment meant to cover the upper part of the body down to or slightly below the waist. It has long sleeves, with ribbed or elasticated bands, zip fasteners or other tightening elements at the cuffs. Similar tightening elements, including drawstrings, are generally to be found at the bottom of this garment. When it has a partial or complete opening at the front, it is generally fastened by means of a slide fastener (zipper). It may or may not be fitted with a hood, a collar and pockets.

—A second garment (a pair of trousers) which may be either close or loose fitting, with or without pockets, with an elasticated waistband, drawstring or other means of tightening at the waist, with no opening at the waist and therefore no buttons or other fastening system. However, such trousers may be fitted with ribbed or elasticated bands, slide fasteners (zippers) or other tightening elements at the bottom of the trouser-legs which generally go down to ankle level. They may or may not have footstraps.

Track suits are classifiable in heading 6211 based on GRI 1. As such, track suit components that form sets are not required to be “put up for retail sale” under GRI 3(b). In order for the subject track suit components to be classifiable within heading 6211, HTSUSA, as track suits at the time of importation, they should be packed in the same shipment at the time of importation, but not necessarily on the same hanger or in the same container. See Headquarters Ruling (HQ) 962125, dated May 5, 2000, referencing the following: Headquarters Memorandum 085944 PR, dated May 10, 1991; HQ 088423, dated May 20, 1991; HQ 952584, dated December 8, 1992; HQ 952907, dated January 29, 1993; HQ 952704, dated February 1, 1993; HQ 953231, dated May 12, 1993; HQ 954270, dated August 17, 1993; HQ 955519, dated April 15, 1994; HQ 956298, dated March 9, 1995.

Further, we refer you to HQ 962125, dated May 5, 2000, which is listed above. In HQ 962125, Customs expressed the view that classification is based on the merchandise's condition as imported rather than the intent of the importer. *Id.* (clarifying that matching suit jackets and bottoms are classifiable as suits based on their condition as imported if they are imported in equal numbers in the same size range and meet the chapter note definition of suits.)¹

This ruling serves to apply HQ 962125, by determining that the subject track suit components are classifiable within heading 6211 (based on their condition as imported), if they are imported together in equal quantities that are matched by size, and if they are constructed and designed to be used exclusively or mainly for athletic activities.²

In HQ 955519, the merchandise was entered in four separate entries spanning a time period of approximately six weeks. Of those four separate entries, one entry contained 200 jackets and 1576 pairs of trousers that were entered in the same shipment and classified as separates. We find 200 jackets and 200 pairs of trousers to be classified as track suit components which are provided *eo nomine* in heading 6211, HTSUSA. For this one entry, we find the equal number of trousers and jackets are classifiable as track suits with the remaining trousers that do not have matching jackets to be separately classifiable.

We are modifying HQ 955519 in part with regard to the one entry of unequal number of pants and jackets and we are classifying the one entry at issue based on its condition as follows:

- 200 of the subject trousers are classifiable in subheading 6211.33.0030, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys: Of man-made fibers: Track suits: Trousers."
- 200 of the subject jackets are classified in subheading 6211.33.0035, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys: Of man-made fibers: Track suits: Other."
- The remaining trousers are classifiable as originally liquidated, which is in subheading 6203.43.4010, HTSUSA, which provides for "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other: Other: Other: Other: Trousers and breeches: Men's."

For further details, we refer you to HQ 962125, which is enclosed.

HOLDING:

With respect to the one entry which contained an uneven number of jackets and pants (200 jackets, 1576 pants), HQ 955519, dated April 15, 1994, is hereby modified.

¹ It is also stated that the intent of the importer is not irrelevant to the classification. See Headquarters Ruling (HQ) 962125, referring to C.S.D. 92-11 (which applies the appropriate analysis of classifying track suit components) as follows:

Components of a set need not be packaged together at time of entry in order to be considered classifiable as a set, but all garments must be present in the entry and there must be an equal amount of components to make up the set in the shipment. Therefore, if the instant goods contained the general characteristics of a track suit and were not coated, the classification outcome would be as follows: * * * **if the goods were shipped separately on different vessels, they would not be classifiable as a set; if the instant goods were shipped on the same vessel, listed on the entry, and not packaged as a set, with an equal amount of trousers and jackets, they would be classifiable as a set** [*emphasis added*]; and **if the instant goods were shipped on the same vessel, listed on the entry, packaged separately, with an unequal amount of trousers and jackets, the extra components would be classifiable as separates** [*emphasis added*]. This rationale is premised on the fact that the EN require two garments to make up a track suit. Therefore, in the case of unequal shipments, the extra components are classifiable separately because it takes two components to make a track suit. In the case of shipments of one component, the lone component is not classifiable as a track suit.

² See HQ 962039 dated April 11, 2000 *citing to* HQ 950378, dated April 22, 1993 which classified garments with shoulder pads, metallic yarn and multicolored thread embroidery, metallic braided piping, beads, and textile and plastic overlays as a track suit in heading 6211, HTSUSA.

The merchandise presented in the entry is classifiable as:

- 200 of the subject trousers are classifiable in subheading 6211.33.0030, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys: Of man-made fibers: Track suits: Trousers."
- 200 of the subject jackets are classified in subheading 6211.33.0035, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys: Of man-made fibers: Track suits: Other."
- The remaining trousers are classifiable as originally liquidated, which is in subheading 6203.43.4010, HTSUSA, which provides for "Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear: Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other: Other: Other: Other: Trousers and breeches: Men's."

MYLES B. HARMON,
Director,
Commercial Rulings Division.

Cc: District Director, US Customs Service
4430 E. Adamo Suite 301, Tampa, Florida 33605

[ATTACHMENT T]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965931
CLA-2 RR:CR:TE 965931 TF
CATEGORY: Classification
TARIFF NO.: 6211.33.0030; 6211.33.0035

STEVEN P. FLORSHEIM, ESQ.
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP
245 Park Avenue
33rd Floor
New York, NY 10167

RE: Revocation of HQ 953231; Classification of Certain Jackets and Trousers as Track Suits; Imported in Equal Numbers; Classification Based on Condition at the Time of Importation, Classification Based on the Intended Manner of Sale; HQ 962125

DEAR MR. FLORSHEIM:

This letter is in reference to Headquarters Ruling Letter (HQ) 953231, dated May 12, 1993, which decided Protest Number 2704-92-100134, dated January 8, 1992, which was initiated by you on behalf of your client, Etonic, Inc.-Puma Division, concerning the classification of certain merchandise as separates as opposed to as track suits.

Upon review, the Bureau of Customs and Border Protection (CBP) has determined that the classification is incorrect.

HQ 953231 is hereby revoked for the reasons set forth below. Although a final determination of a protest pursuant to Customs Regulations cannot be modified or revoked as it is applicable only to the entries protested, this ruling serves to change the legal principle applied in HQ 953231. Further, this revocation decision will be applicable to any unliquidated entries or future importations of similar merchandise.

FACTS:

The merchandise at issue in HQ 953231, dated May 12, 1993, is described as follows:

- The imported merchandise consists of two styles of men's jackets and one style of men's trousers. Both the jackets, style "Venus-M-1" (Venus) and "Saturn M-32" (Saturn), are made of a woven nylon fabric and are lined. They have a full front opening, a zipper extending to the top of a stand up collar, back vertical vents, a pocket below the waistline and an embroidered logo. The color pattern for the Venus style is spruce/marigold/ peacock and the color pattern for the Saturn style is spruce/peacock/marigold.
- The trousers, "Pluto M-105" (Pluto), are also made of woven nylon fabric. They have an exposed elastic drawcord waist, zippered leg openings, a pocket below the waistline, side seam pockets and an embroidered logo. The trousers are unlined. The color of the trousers is spruce.
- 2400 jackets and 2400 trousers were imported in a single shipment, but they were packed separately. The breakdown of garment styles and sizes is as follows:

	Small	Medium	Large	X-Large
Venus Jacket	98	360	468	266
Saturn Jacket	96	360	488	264
Pluto Trousers	276	792	883	449

- In addition, the protestant submitted a page from the Puma catalogue depicting the Venus jacket and the Pluto pants. It states that the sizes available for the jacket range from S-XL and the jacket's wholesale price is \$22.00 and the suggested retail price is \$44.00. The trousers' size range from S-XL and the wholesale price is \$13.50 and the suggested retail price is \$27.00.
- Upon liquidation, the jackets were classified in subheading 6201.93.3510, HTSUS, which provides for "[m]en'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: [a]noraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets): [o]f man-made fibers: [o]ther: [o]ther: [o]ther: [o]ther: [m]en's." The trousers were classified in subheading 6203.43.4010, HTSUS, which provides for "[m]en's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear): [t]rousers * * * : [o]f synthetic fibers: [o]ther: [o]ther: [o]ther: [o]ther: [o]ther: [t]rousers and breeches [m]en's."

ISSUE:

What is the proper classification of the merchandise within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

LAW AND ANALYSIS:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Woven track suits are provided *eo nomine* in heading 6211, HTSUSA. EN 62.11 states, in pertinent part, that "the provisions of the Explanatory Note to heading 61.12 concerning track suits * * * and of the Explanatory Note to heading 61.14 concerning other garments apply, *mutatis mutandis*, to the articles of this heading." We refer to EN 61.12 which describes track suits as consisting of two garments, namely:

—A garment meant to cover the upper part of the body down to or slightly below the waist. It has long sleeves, with ribbed or elasticated bands, zip fasteners or

other tightening elements at the cuffs. Similar tightening elements, including drawstrings, are generally to be found at the bottom of this garment. When it has a partial or complete opening at the front, it is generally fastened by means of a slide fastener (zipper). It may or may not be fitted with a hood, a collar and pockets.

—A second garment (a pair of trousers) which may be either close or loose fitting, with or without pockets, with an elasticated waistband, drawstring or other means of tightening at the waist, with no opening at the waist and therefore no buttons or other fastening system. However, such trousers may be fitted with ribbed or elasticated bands, slide fasteners (zippers) or other tightening elements at the bottom of the trouser-legs which generally go down to ankle level. They may or may not have footstraps.

Track suits are classifiable based on GRI 1. As such, track suit components that form sets are not required to be “put up for retail sale” under GRI 3(b). In order for the subject track suit components to be classifiable within heading 6211, HTSUSA, they should be packed in the same shipment at the time of importation, but not necessarily on the same hanger or in the same container. See Headquarters Ruling (HQ) 962125, dated May 5, 2000, referencing the following: Headquarters Memorandum 085944 PR, dated May 10, 1991; HQ 088423, dated May 20, 1991; HQ 952584, dated December 8, 1992; HQ 952907, dated January 29, 1993; HQ 952704, dated February 1, 1993; HQ 953231, dated May 12, 1993; HQ 954270, dated August 17, 1993; HQ 955519, dated April 15, 1994; HQ 956298, dated March 9, 1995.

In this instance, 2400 track suit trousers and 2400 track suit jackets were separately packed and entered within the same shipment. Further, we refer you to HQ 962125, dated May 5, 2000, which is listed above. In HQ 962125, Customs expressed the view that classification is based on the merchandise's condition as imported rather than the intent of the importer. *Id.* (clarifying that matching suit jackets and bottoms are classifiable as suits based on their condition as imported if they are imported in equal numbers in the same size range and meet the chapter note definition of suits.)¹

This ruling serves to apply HQ 962125, by determining that the subject track suit components are classifiable within heading 6211 (based on their condition as imported), if they are imported together in equal quantities that are matched by size, and if they are constructed and designed to be used exclusively or mainly for athletic activities.²

Based on the submitted facts, as the subject track suit components are classifiable in heading 6211, HTSUSA, and are shipped together in the same shipment, we find the subject merchandise to be classifiable as track suits as follows:

- 2400 of the subject trousers are classifiable in subheading 6211.33.0030, HTSUSA, which provides for “Track suits, ski-suits and swimwear; other gar-

¹ It is also stated that the intent of the importer is not irrelevant to the classification. See Headquarters Ruling (HQ) 962125, referring to C.S.D. 92-11 (which applies the appropriate analysis of classifying track suit components) as follows:

Components of a set need not be packaged together at time of entry in order to be considered classifiable as a set, but all garments must be present in the entry and there must be an equal amount of components to make up the set in the shipment. Therefore, if the instant goods contained the general characteristics of a track suit and were not coated, the classification outcome would be as follows: * * * if the goods were shipped separately on different vessels, they would not be classifiable as a set; if the instant goods were shipped on the same vessel, listed on the entry, and not packaged as a set, with an equal amount of trousers and jackets, they would be classifiable as a set [emphasis added]; and if the instant goods were shipped on the same vessel, listed on the entry, packaged separately, with an unequal amount of trousers and jackets, the extra components would be classifiable as separates [emphasis added]. This rationale is premised on the fact that the EN require two garments to make up a track suit. Therefore, in the case of unequal shipments, the extra components are classifiable separately because it takes two components to make a track suit. In the case of shipments of one component, the lone component is not classifiable as a track suit.

² See HQ 962039 dated April 11, 2000 *citing to* HQ 950378, dated April 22, 1993 which classified garments with shoulder pads, metallic yarn and multicolored thread embroidery, metallic braided piping, beads, and textile and plastic overlays as a track suit in heading 6211, HTSUSA.

ments: Other garments, men's or boys': Of man-made fibers: Track suits: Trousers";

- 2400 of the subject jackets are classified in subheading 6211.33.0035, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys': Of man-made fibers: Track suits: Other."

In sum, we are striking the reference in HQ 953231 to the intent of the importer as this has no bearing on the classification determination and we are classifying the merchandise based on their condition as imported in heading 6211, HTSUSA, which provides for track suits. For further details, we refer you to HQ 962125, which is enclosed.

HOLDING:

HQ 965931, dated May 19, 1993 is hereby revoked.

The matching track suit pants and jackets (which are entered in equal quantities) are classifiable as tracksuits. The matching pants are classifiable in subheading 6211.33.0030, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, men's or boys': Of man-made fibers: Track suits: Trousers."

MYLES B. HARMON,
Director,
Commercial Rulings Division.

cc: District Director of Customs
300 South Ferry Street, Room 2017
Terminal Island,
San Pedro, CA 90731

[ATTACHMENT U]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965935
CLA-2 RR:CR:TE 965935 TF
CATEGORY: Classification
TARIFF NO.: 6204.11.0000, 6204.31.2010

Mr. JONATHAN FEE
ALSTON AND BYRD, LLP
601 Pennsylvania Avenue, NW
North Building, 10th Floor
Washington, DC 20004-2601

RE: Modification of NY A87564; Classification of Women's Suits; Separately Packed in Equal Quantities; Classification Based on the Intended Manner of Sale; HQ 962125, dated May 5, 2000

DEAR Mr. FEE:

In your letter dated September 7, 1996, you requested a classification ruling on behalf of your client, SAG Harbor Division of Kellwood Company. In response to your request, Customs issued NY A87564, dated October 10, 1996, which pertains to the tariff classification of certain women's suits.

Upon review, the Bureau of Customs and Border Protection (CBP) has determined that the analysis of NY A87564 is erroneous as the merchandise was erroneously classified based on the intent of the importer. This ruling letter sets forth the correct classification determination based on the articles' condition as imported.

NY A87564 is hereby modified for the reasons set forth below.

FACTS:

The facts below about the merchandise at issue were taken from NY A87564.

Style 122 consists of a women's jacket and shorts constructed from 100 percent wool. Both garments are lined with 100 percent polyester woven fabric. The double-breasted jacket has four panels and features long sleeves, a notched collar, and two besom pockets below the waist. The shorts have a pleated front, a zippered fly and button closure and side pockets. The waistband is partially elasticized at the rear and contains four belt loops.

It is your contention that the goods meet the tariff and commercial definition for suits. However, due to the innovative retail sale practices employed by the importer, you suggest that Customs might perceive a problem in classifying the garments as suits. You presented the following information concerning the importation of the goods:

- **PACKING and SHIPPING:** The garments will be shipped to the United States on hangers. The jacket and hanger will be covered by a plastic bag; the shorts will be covered by a separate plastic bag on another hanger; the two components will be covered by a third polybag and connected with a plastic tie. Nearly all import shipments will contain an equal number of upper and lower body garments packaged together as suits in the manner previously described. Occasionally, a shipment may include a small number of additional jackets without matching bottoms. It is the importer's understanding and intent that those pieces which do not meet the definition of a suit (i.e. a set of two garments) will be entered as separates.
- **DOCUMENTATION:** The importer's purchase orders will refer to this combination of garments as a "suit" and will identify one style designation, 122. In addition, each component will have its own style number, the jacket, style 8505 and the shorts, style 8503. These designations will also appear on the invoices furnished by the foreign suppliers.
- **LABELING:** Each component will be individually marked with the country of origin and the required info under TFPIA. The garments will also be marked with the component style number. Fewer than half of all shipments will be preticketed with retail sales and other retail information at the request of the importer's customers.
- **INTENT:** The importer will sell the "suits" to its customers, although the documents will indicate the separate style numbers. You state that nearly all shipments to customers will be of an equal number of top and bottoms, in corresponding size scales, so that they can be sold and worn as suits. The importer intends that the jackets and bottoms are of the same color and size, and worn together. Sometimes a jacket of one size might be matched with a skirt or pant of another size to achieve optimal fit. A customer will rarely buy only one component.
- **ADVERTISING:** The importer's customers will advertise the articles as suits (Exhibit A). Although separate prices are shown, the advertising shows the garments being worn together.
- **DISPLAY:** The merchandise will be displayed together on double rack systems or rounders. Exhibit B shows this grouping of garments grouped by size or color. Although the garments are designed and intended to be worn as suits, the jacket and shorts will rarely if ever be placed together on a single hanger. This is because a consumer may choose to buy a jacket in one size and a bottom in another size to achieve an optimal fit.
- Both garments in this case are constructed from identical woven fabric and color, and they are of the same composition.

ISSUE:

What is the proper classification of the merchandise within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

LAW AND ANALYSIS:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Chapter 62 provides for articles of apparel and clothing accessories, not knitted or crocheted. Note 3(a) to Chapter 62, HTSUSA, defines the term "suit" as a set of garments composed of two or three pieces made up, in respect of their outer surface, in identical fabric and comprising:

- one suit coat or jacket the outer shell of which, exclusive of sleeves, consists of four or more panels, designed to cover the upper part of the body, possibly with a tailored waistcoat in addition whose front is made from the same fabric as the outer surface of the other components of the set and whose back is made from the same fabric as the lining of the suit coat or jacket; and
- one garment designed to cover the lower part of the body and consisting of trousers, breeches or shorts (other than swimwear), a skirt or a divided skirt, having neither braces nor bibs.

All of the suit components must be of the same fabric construction, color and composition; they must also be of the same style and of corresponding or compatible size.

Women's suits are provided *eo nomine* in heading 6204 and are classifiable pursuant to GRI 1, HTSUSA. Unlike "sets", which are provided within GRI 3(b), suits are not required to be "put up for retail sale." Further, Note 3(a) to Chapter 62 does not require that suit components be put up for retail sale. Rather, in order for suit components to be classifiable as suits of heading 6204 (pursuant to Note 3(a)), the suit components are required at the time of importation to be present together in the same shipment in equal amounts, but need not be packed together.

Customs has clearly articulated its view of how suits are to be classified in HQ 962125, dated May 5, 2000. In HQ 962125, Customs clarified that when matching suit jackets and bottoms, which meet the chapter note definition of suits are imported in the same shipment (in equal numbers and in the same size range), the garments are to be classified as suits based on condition as imported. It is also stated that the intent of the importer is irrelevant to the classification of the goods.¹

Thus, in this instance, the subject merchandise, identified as style 122 (which is composed of a jacket (style 8505) and a pair of shorts (style 8503)), is imported on hangers with each article individually covered by polybags and connected by plastic ties. However, we do not find the individualized packaging of the goods to be controlling with respect to whether the subject merchandise is a suit because style 122 clearly meets the terms of Note 3(a) to Chapter 62.

Further, this ruling serves to apply HQ 962125, by determining that the subject merchandise, when imported together in equal quantities, matched by size and color, meet the tariff definition of suits as provided by Note 3 of Chapter 62 and are classi-

¹ See Headquarters Ruling (HQ) 962125, dated May 5, 2000, which refers to C.S.D. 92-11 (which applies the appropriate analysis of classifying suit components) as follows:

Components of a set need not be packaged together at time of entry in order to be considered classifiable as a set, but all garments must be present in the entry and there must be an equal amount of components to make up the set in the shipment.

fied in heading 6204 as provided by GRI 1. In this case, the equal number of matching suit jackets and shorts are classifiable as suits. Additionally, to the extent NY A87564 relied on the intent of the importer to classify the goods, we find this ruling to be in error. Therefore, we are striking the reference to the intent of the importer in NY A87564 as this has no bearing on the classification determination.

In sum, we are classifying the equal numbers of the matching jackets and matching short bottoms on the basis of their condition as imported, which is as women's suits in subheading 6204.11.0000, HTSUSA, which provides *eo nomine* for "women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Suits: Of wool or fine animal hair."

Where the occasion arises whereby a shipment contains a small number of additional jackets without matching bottoms, these jackets are classifiable within subheading 6204.31.2010, HTSUSA, which provides for "Women's or Girls' * * * Suit-type jackets and blazers * * * Of wool or fine animal hair: Other: Women's."

For further details, we refer you to HQ 962125, which is enclosed.

HOLDING:

NY A87564, dated October 10, 1996 is hereby modified.

The matching jackets and matching shorts are classified within subheading 6204.11.0000, HTSUSA, which provides *eo nomine* for "women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Suits: Of wool or fine animal hair." The general column one duty rate is 14.3 percent *ad valorem* and the quota category is 444.

The separately imported jackets (without matching shorts) are classified within subheading 6204.31.2010, HTSUSA, which provides for "Women's or Girls' * * * suit-type jackets and blazers * * * Of wool or fine animal hair: Other: Women's." The general column one duty rate is 4.6% cents/kg + 17.8 percent *ad valorem* and the quota category is 444.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Textile Status Report for Absolute Quotas*, previously available on the Customs Electronic Bulletin Board (CEBB), which is available now on the CPB website at www.customs.gov.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT V]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965927
CLA-2 RR:CR:TE 965927 TF
CATEGORY: Classification
TARIFF NO.: 6112.41.0010

JAMES F. O'HARA, ESQ.
STEIN SHOSTAK SHOSTAK & O'HARA
3580 Wilshire Boulevard
Los Angeles, CA 90010-2597

RE: Modification of HQ 952584; Classification of Women's Swimwear; Tops and Bottoms Imported Together but Separately Packaged in Identical Quantities; Classification Based on Condition at the Time of Importation; Classification Based on the Intended Manner of Sale; HQ 962125; HQ 965497

DEAR MR. O'HARA:

Pursuant to your classification request, on behalf of your client, Krystal K. International Inc., concerning certain styles of women's two-piece bikini swimwear, Customs issued HQ 952584, dated December 8, 1992, to your firm. This ruling classified the merchandise in subheading 6112.41.0010, HTSUSA, which provides for women's knit swimwear of synthetic fibers, of fabric containing by weight 5 percent or more elastomeric yarn or rubber thread.

Upon review, the Bureau of Customs Border and Protection has determined that the classification is correct, however the analysis applied to reach the classification determination is incorrect. This ruling letter sets forth the correct classification determination based on the articles condition as imported rather than the intent of the importer.

HQ 952584 is hereby modified for the reasons set forth below.

FACTS:

The subject swimwear consist of two-piece bikini swimsuits that are composed of 83 percent nylon and 17 percent spandex knit fabric. The outer shell of one piece is either the same color and pattern, or of a coordinated color and pattern, as a matching second piece. The swimsuits will be imported with the tops and bottoms separately packaged, but in identical quantities of coordinated tops and bottoms that will be sold as sets.

The three sample bottom pieces, designated with a (B) in the model number, are composed of knit nylon and spandex with a polyester lined front panel and crotch. The three sample top pieces, designated with a (T) in the model number, are also composed of nylon and spandex and have a front panel that covers the bosom. All are secured in the back with a one-inch square, clear, plastic fastener.

The three sample sets are as follows:

1. Model LS(B)000 and Model LS(T)000: the top is designed in a bandeau style.
2. Model LS(B)001 and Model LS(T)001: the bottom piece is decorated with a ruffled panel of nylon and spandex; the top piece is a short crop tank-top style with lace-up detailing in the front.
3. Model LS(B)002 and Model LS(T)002: the top is designed in a bandeau style.

ISSUE:

What is the proper classification of the merchandise within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

LAW AND ANALYSIS:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event

that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Heading 6112, HTSUSA, provides *eo nomine* for swimwear. The EN to heading 6112 states that the heading includes, "Swimwear (knitted or crocheted one-piece or two-piece bathing costumes, swimming shorts and trunks, whether or not elastic)." The EN to heading 6112 specifically references "one-piece or two-piece bathing costumes."

The issue in this case is whether the classification of the submitted bikinis which are separately packaged in identical quantities of coordinated tops and bottoms, is based on the intent of the importer. With regard to whether the intent of the importer is controlling in classifying swimwear merchandise, we note that in HQ 952584, Customs stated that when sets of garments are not packed together in a manner that clearly identifies them as suits at the time of importation, the classification is based on the bona fide intent of the importer. However, since the issuance of HQ 952584, Customs has revisited this matter in HQ 962125, dated May 5, 2000, and clarified its position by stating that the intent of the importer is irrelevant to the goods' classification. The condition of the goods as imported is determinative.

In this instance, the subject bikinis are separately packaged in identical quantities of coordinated tops and bottoms to be sold as sets. The classification of bikini merchandise was addressed in HQ 965497, dated April 6, 2002, in which Customs considered whether the EN's specific reference to "one-piece or two-piece bathing costumes" requires that both pieces are imported together. In reaching its determination, Customs ruled that "two-piece bathing costumes", such as bikinis, are provided for under heading 6112, HTSUSA, as GRI 1 sets. It was also determined that subheading 6112.41, HTSUSA, which provides for "women's or girls' swimwear", is sufficiently broad to encompass one piece of a two-piece bathing costume. *Id.*¹ Thus, Customs logically concluded that where separately packaged swimwear tops and bottoms are imported in unequal quantities, any "extra" tops or bottoms are also classified as swimwear of heading 6112, HTSUSA. *Id.*

This ruling serves to apply HQ 962125 to the classification of the subject bikinis by determining that the merchandise is classifiable (based on condition as imported) in heading 6112, HTSUSA, which provides for women's swimwear, so long as they are imported together in equal quantities that are coordinated and matched by size, and constructed and designed to be used exclusively or mainly for swimming.

Therefore, to the extent that HQ 952584 relied on the intent of the importer to classify the goods, we find the ruling to be in error and are striking the reference to the intent of the importer in HQ 952584 as this has no bearing on the classification determination.

In sum, we are classifying the identical numbers of the coordinated swimsuit tops and bottoms on the basis of their condition as imported, which is swimwear of heading 6112, HTSUSA.

HOLDING:

HQ 952584, dated December 8, 1992, is hereby modified.

The subject tops and bottoms of the bikini swimsuits are classifiable in subheading 6112.41.0010, HTSUSA, as "women's * * * swimwear, of synthetic fibers, of fabric containing by weight 5 percent or more elastomeric yarn or rubber thread." The applicable general column one rate of duty is 25.1 percent *ad valorem* and the quota category is 659.

¹ See HQ 965497, in which Customs states the provision for swimwear is not limited to a combination of a top and bottom garment but covers all women's swimwear. It adds:

Although there must be two pieces to be a "two-piece bathing costume", a bikini top is also classified as swimwear because the provision for women's swimwear is sufficiently broad. Thus swimwear tops and bottoms, when imported separately, remain classified as swimwear of heading 6112, HTSUSA.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the *Textile Status Report for Absolute Quotas*, previously available on the Customs Electronic Bulletin Board (CEBB), which is available now on the CPB website at www.customs.gov.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT W]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965928
CLA-2 RR:CR:TE 965928 TF
CATEGORY: Classification
TARIFF NO.: 6112.41.0010

WILLIAM F. SULLIVAN, SPECIAL SERVICES MANAGER
MSAS CUSTOMS LOGISTICS, INC.
150-16 132nd Avenue
Jamaica, NY 11434

RE: Modification of HQ 952907; Classification of Mix and Match Women's Swimwear; Tops and Bottoms Imported Together but Separately Packaged in Unequal Quantities of Tops and Bottoms; Classification Based on Condition at the Time of Importation; Classification Based on the Intended Manner of Sale; HQ 962125, dated May 5, 2000; HQ 965497, dated April 6, 2002

DEAR MR. SULLIVAN:

Pursuant to your classification request, on behalf of your client, New Hampton Inc., concerning certain styles of women's mix and match swimwear, Customs issued Headquarters Ruling Letter (HQ) 952907, dated January 29, 1993, to your company. This ruling classified the merchandise in subheading 6112.41.0010, HTSUSA, which provides for women's knit swimwear of synthetic fibers, of fabric containing by weight 5 percent or more elastomeric yarn or rubber thread.

Upon review, the Bureau of Customs and Border Protection has determined that this classification is correct, however the analysis applied to reach the classification determination is incorrect. This ruling letter sets forth the correct classification determination based on the articles condition as imported rather than intended manner of sale as represented by the importer.

HQ 952907 is hereby modified for the reasons set forth below.

FACTS:

The merchandise at issue consists of women's mix and match knit swimwear. Seven samples were submitted, all composed of 80% nylon and 20% spandex. Style S93-804-24 is a bra top with a hook closure and detachable shoulder straps. Style S93-804-22 is a crop-like garment. Styles S93-804-21 and S93-804-19 are solid (different) colored bikini bottoms with gussets. Style S93-804-23 is a bra top with shoulder straps and strap closures. Style S93-804-20 is a bikini bottom with a waistband and gusset. The seventh sample, lacking a style number, is a crop-like top design. Styles

-21, -19 and -23 match as to fabric and color. The seventh sample matches the multi-colored bottoms -19 and -20.

You state that the garments are mix and match swimwear that will be packaged separately, but sold at retail as swimsuits. The tops and bottoms will be imported in unequal numbers.

ISSUE:

What is the proper classification of the merchandise within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

LAW AND ANALYSIS:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Heading 6112, HTSUSA, provides *eo nomine* for swimwear. The EN to heading 6112 states that the heading includes, "Swimwear (knitted or crocheted one-piece or two-piece bathing costumes, swimming shorts and trunks, whether or not elastic)." The EN to heading 6112 specifically references "one-piece or two-piece bathing costumes."

The issue in this case is whether the classification of the separately packaged, unequal quantities of mix and match swimwear tops and bottoms is based on the intent of the importer. Part of this issue was previously considered by Customs in Headquarters Ruling Letter (HQ) 965497, dated April 6, 2002, in which separately imported mix and match swimwear was classified in subheading 6112.41.0010, HTSUSA, which provides for women's swimwear of synthetic fibers, of fabric containing by weight 5 percent or more elastomeric yarn or rubber thread.

With regard to whether the intent of the importer is controlling in classifying swimwear merchandise, we note that in HQ 952907, Customs stated that when sets of garments are not packed together in a manner that clearly identifies them as suits at the time of importation, the classification is based on the bona fide intent of the importer. However, since the issuance of HQ 952907, Customs has revisited this matter in HQ 962125, dated May 5, 2000, and clarified its position by stating that the intent of the importer is irrelevant to the goods' classification. The condition of the goods as imported is determinative.

In this instance, the unequal quantities of mix and match swimwear tops and bottoms are to be sold as swimsuit sets. The classification of swimwear merchandise was addressed in HQ 965497 dated April 6, 2002, in which Customs considered whether the EN's specific reference to "one-piece or two-piece bathing costumes" requires that both pieces are imported together. In reaching its determination, Customs ruled that "two-piece bathing costumes", such as bikinis, are provided for under heading 6112, HTSUSA, as GRI 1 sets. It was also determined that subheading 6112.41, HTSUSA, which provides for "women's or girls' swimwear", is sufficiently broad to encompass one piece of a two-piece bathing costume.¹ *Id.* Thus, Customs logically concluded that where separately packaged swimwear tops and bottoms are imported in unequal quantities, any "extra" tops or bottoms are also classified as swimwear of heading 6112, HTSUSA. *Id.*

¹ See HQ 965497, in which Customs states the provision for swimwear is not limited to a combination of a top and bottom garment but covers all women's swimwear. It adds:

Although there must be two pieces to be a "two-piece bathing costume", a bikini top is also classified as swimwear because the provision for women's swimwear is sufficiently broad. Thus swimwear tops and bottoms, when imported separately, remain classified as swimwear of heading 6112, HTSUSA.

This ruling serves to apply HQ 962125 to the classification of the unequal quantities of mix and match swimwear tops and bottoms by determining that the merchandise is classifiable (based on its condition as imported) in heading 6112, HTSUSA, which provides for women's swimwear, so long as the subject merchandise is imported together in the same shipment, coordinated and matched by size, and constructed and designed to be used exclusively or mainly for swimming.

Therefore, to the extent that HQ 952907 relied on the intent of the importer to classify the goods, we find the ruling to be in error and we are striking the reference to the intent of the importer in HQ 952907 as this has no bearing on the classification determination.

In sum, where a shipment contains an equal number of mix and match swimwear tops and bottoms, the goods are classified as swimwear of heading 6112, HTSUSA based on their condition as imported. When imported separately, or when imported without a matching component, the merchandise is also classified as swimwear of heading 6112, HTSUSA. For further details, we refer you to HQ 962125, which is enclosed.

HOLDING:

HQ 952907, dated January 29, 1993, is hereby modified.

An equal number of mix and match swimwear tops and bottoms are classified in subheading 6112.41.0010, HTSUSA, as "women's * * * swimwear, of synthetic fibers, of fabric containing by weight 5 percent or more elastomeric yarn or rubber thread." The applicable general column one rate of duty is 25.1 percent *ad valorem* and the quota category is 659.

Any component that is imported separately without a matching component is classified in subheading 6112.41.0010, HTSUSA, as "women's * * * swimwear, of synthetic fibers, of fabric containing by weight 5 percent or more elastomeric yarn or rubber thread." The applicable general column one rate of duty is 25.1 percent *ad valorem* and the quota category is 659.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client check, close to the time of shipment, the *Textile Status Report for Absolute Quotas*, previously available on the Customs Electronic Bulletin Board (CEBB), which is available now on the CPB website at www.customs.gov.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN SCANNING ELECTRON MICROSCOPES FITTED WITH EQUIPMENT SPECIFICALLY DESIGNED FOR THE HANDLING AND TRANSPORT OF SEMICONDUCTOR WAFERS

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of certain scanning electron microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling pertaining to the tariff classification of certain scanning electron microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers 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 August 4, 2003.

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

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 572–8785.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter “Title VI”), became effective.

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a certain scanning electron microscope fitted with equipment specifically designed for the handling and transport of semiconductor wafers. Although in this notice Customs is specifically referring to one ruling (HQ 962435) 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 importa-

tions of merchandise subsequent to the effective date of the final notice of the proposed action.

In HQ 962435, dated December 15, 1999, (Attachment A) Customs classified the MI-3080 Critical Dimension Measuring and Checking Scanning Electron Microscope (MI-3080 CD-SEM). The MI-3080 CD-SEM consists of, in relevant part, a scanning electron microscope and auto-loading equipment for the handling and transport of semiconductor wafers and is used to control the process of the wafer production. Customs concluded the CD-SEM was a microscope of heading 9012, HTSUS, specifically classified in subheading 9012.10.00, HTSUS, which provides for "Microscopes other than optical microscopes; diffraction apparatus; parts and accessories thereof: Microscopes other than optical microscopes; diffraction apparatus." Accordingly, it was excluded from the claimed classification under heading 9031, HTSUS.

It is now Customs position that the merchandise should have been analyzed pursuant to Note 4 to Section XVI, by virtue of Note 3 to Chapter 90, HTSUS, as a "functional unit." The auto-loader component and the microscope component are designed work together measuring and checking the wafers during the semiconductor wafer production process. They are "essential to the performance of the function specific to the functional unit as a whole," as described in pertinent part in the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) to Section XVI, Note 4, HTSUS.

As a functional unit, a CD-SEM fitted with the equipment specifically designed for the handling and transport of semiconductor wafers in its condition as imported exceeds the scope of a microscope of heading 9012, HTSUS. Thus, it is not subject to the exclusion of microscopes from heading 9031, HTSUS. Accordingly, the instant CD-SEM is classified in subheading 9031.80.40, HTSUS, which provides for "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof: Other instruments, appliances and machines: Electron beam microscopes fitted with the equipment specifically designed for the handling and transport of semiconductor wafers or reticles."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 962435 and any other ruling not specifically identified to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analyses set forth in HQ 966482 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before

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

Dated: June 17, 2003

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

[Attachments]



[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 962435
December 15, 1999
CLA-2 RR:CR:GC 962435 HMC
CATEGORY: Classification
TARIFF NO.: 9012.10.00

PORT DIRECTOR OF CUSTOMS
New York/JFK Area
Building 77
Jamaica, NY 11430

RE: Protest 1001-98-102442: Measurement and Inspection SEM Microscope, Model MI-3080; Microscopes, Other than Optical Microscopes

DEAR PORT DIRECTOR:

This is our decision on Protest 1001-98-102442, filed against your classification of the Measurement and Inspection SEM microscope, model MI-3080 (MI-3080) entered in 1997. The entry under protest was liquidated on July 10, 1998, and this protest was timely filed on July 15, 1998.

FACTS:

Protestant describes the MI-3080 as an electron beam microscope fitted with equipment specifically designed for handling and transport of semiconductor wafers. Protestant also states that the merchandise is specifically designed for the critical dimension measurement of a line, space or pitch on the surface of the semiconductor wafer. A production line uses the MI-3080 to control the process while making wafers. The automatic wafer loading along with pattern matching capability makes the tool specific to production. The acceleration voltage is limited along with a fixed working distance and the stage can only move in the X and Y direction.

The merchandise was entered and liquidated under a provision for microscopes other than optical microscopes under subheading 9012.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). However, the protestant claims that the merchandise is classifiable under subheading 9031.80.40, HTSUS, as other measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter, electron beam microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles.

The 1997 HTSUS provisions under consideration are as follows:

- 9012 Microscopes other than optical microscopes; diffraction apparatus; parts and accessories thereof:
- 9012.10.00 Microscopes other than optical microscopes; diffraction apparatus
- * * * * * * *

- 9031 Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof.
- 9031.80 Other instruments, appliances and machines:
- 9031.80.40 Electron beam microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles

ISSUE:

Whether the measurement and inspection SEM microscope is classifiable as other measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; electron beam microscopes fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles under subheading 9031.80.40, HTSUS, or as microscopes, other than optical microscopes under subheading 9012.10.00, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Heading 9031, HTSUS, provides for "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter * * *" Accordingly, we must first determine whether the merchandise is described within heading 9012, HTSUS, as a microscope other than an optical microscope.

The Harmonized Commodity Description And Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs believes the EN's should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

General EN (I) to Chapter 90, HTSUS, at page 1576, states, in part, that The Chapter includes in particular:

* * * * *

(F) A large group of measuring, checking or automatically controlling instruments and apparatus, whether or not optical or electrical and in particular those of heading 90.32 as defined in Note 6 to the Chapter.

Some of these instruments are specified in certain headings, for example, compound optical microscopes (heading 90.11), electron microscopes (heading 90.12), other instruments and apparatus are covered by more general descriptions in headings which refer to a particular science, industry, etc. (e.g., astronomical instruments of heading 90.05, surveying instruments and appliances of heading 90.15, X-ray, etc., apparatus of heading 90.22).

EN 90.12, at page 1598, states that this heading includes:

(A) Electron microscopes differ from optical microscopes in that they use a beam of electrons instead of light rays.

The normal type of electron microscope is an assembly of the following devices usually enclosed in a common frame as a unit:

- (1) A device (known as an electron gun) for emitting and accelerating the electrons.
- (2) A system (playing the part of the optical system of an ordinary microscope) consisting of electrostatic or electromagnetic "lenses" (which are respectively electrically charged plates or coils carrying a current); these act as condenser, objective and projector. There is usually also a further so-called field_"lens", between the objective and the projector, which serves to vary the range of magnification while not altering the scope of the scanned field.

(3) The specimen stage.

(4) The vacuum pump unit which maintains a vacuum in the electron tube; these are sometimes self-contained units connected to the appliance.

(5) The elements for visual observation on a fluorescent screen and for photographic recording of the image.

(6) Control stands and panels bearing the elements controlling and regulating the electron beam.

This heading also includes scanning electron microscopes in which a very fine beam of electrons is directed repeatedly onto different points of the sample. Information is obtained by measuring, for example, the electrons transmitted, the secondary electrons emitted, or the optical rays. The result may then be displayed on a monitor screen which can be incorporated in the microscope.

The electron microscope has many uses both in the field of pure science (biological or medical research, composition of matter, etc.), and in industrial technique (examination of fumes, dust, textile fibers, colloids, etc.; examination of the structure of metals, paper, etc.).

Evidence provided by the protestant shows that the MI-3080 is an electron beam microscope fitted with equipment specifically designed for handling and transport of semiconductor wafers. The protestant provided descriptive literature for model MI-4080, another system which it described as the current instrument with some minor improvements. This literature states that "all chips on a 200 mm wafer can be fully automatically measured up to magnifications of 100,000X and 200,000X * * * . The multiple measurement function allows the high-speed and many points automated measurements within one SEM image. There is no clear indication of what the handling and transport equipment consists of or its function. Nevertheless, it is hard to see how the addition of elements that do no measuring or checking, just precision handling, can convert a microscope into a measuring or checking instrument.

We note that EN 90.12 states that "information is obtained by measuring, for example, the electrons transmitted * * * ." Thus, measurement and checking have always been a usage of microscopes. We also note that EN 90.31, at page 1654, state that

In addition to profile projectors, this heading covers measuring or checking instruments, appliances and machines, whether or not optical. It should, however, be noted that this group does not include any instruments, apparatus, etc., falling in headings 90.01 to 90.12 or 90.15 to 90.30; in particular, the following are therefore excluded:

* * * * *

(b) Microscopes (heading 90.11 or 90.12).

We therefore conclude that the merchandise fits the description of heading 9012, which provides for microscopes, other than optical microscopes. The merchandise is precluded from classification under subheading 9031.80.40, HTSUS. See **HQ 088231**, dated March 8, 1991, for a similar finding.

HOLDING:

The Measurement and Inspection SEM Microscope, Model MI-3080, is classifiable under subheading 9012.10.00, HTSUS, as "Microscopes other than optical microscopes; diffraction apparatus; parts and accessories thereof: Microscopes other than optical microscopes; diffraction apparatus."

This protest should be DENIED. In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the Protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision.

Sixty days from the date of the decision, the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs

Home Page on the World Wide Web at www.customs.ustreas.gov, by means of the Freedom of Information Act, and other methods of public distribution.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966482
CLA-2 RR:CR:GC 966482 DBS
CATEGORY: Classification
TARIFF NO.: 9031.80.40

NNR AIRCARGO SERVICES (USA) INC.
Hook Creek Blvd & 145th, Unit C-1A
Valley Stream, NY 11581

RE: CD Measurement and Inspection Scanning Electron Microscope fitted with equipment specifically designed for the handling and transport of semiconductor wafers; Revocation of HQ 962435

DEAR SIR OR MADAM:

On December 15, 1999, this office issued HQ 962435, our decision on the Application for Further Review of Protest # 1001-98-102442, which classified a critical dimension measuring and inspection scanning electron microscope in subheading 9012.10.00, Harmonized Tariff Schedule of the United States (HTSUS). The merchandise was imported by Topcon Technologies, whom you represented at that time. We have reconsidered HQ 962435 and determined the classification to be incorrect.

FACTS:

The merchandise at issue, the Topcon Technologies MI-3080 Critical Dimension Measuring and Inspection Scanning Electron Microscope (CD-SEM), is comprised of a scanning electron microscope and a cassette-to-cassette-type auto loader with a transport arm that loads and unloads multiple semiconductor wafers automatically from the cassette to the specimen chamber of the microscope for inspection in a control cabinet. The CD-SEM is used to control the process of the wafer production. It measures the critical dimensions of line, space and pitch on the surface of semiconductor wafers and matches the patterns on the wafers. The acceleration voltage is limited along with a fixed working distance and the stage (of the microscope) can only move in the X and Y directions.

ISSUE:

Whether the scope of subheading 9012.10.00, HTSUS, includes the instant a CD-SEM, and thus excludes it from measuring and checking equipment not specified or included elsewhere in subheading 9031.80.40, HTSUS, which provides specifically for electron beam microscopes fitted with handling and transport equipment for semiconductor wafers and reticles.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 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:

9012	Microscopes other than optical microscopes; diffraction apparatus; parts and accessories thereof:
9012.10.00	Microscopes other than optical microscopes; diffraction apparatus
*	* * * * *
9012.90.00	Parts and accessories
*	* * * * *
9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof:
9031.80	Other instruments, appliances and machines:
9031.80.40	Electron beam microscopes fitted with the equipment specifically designed for the handling and transport of semiconductor wafers or reticles
*	* * * * *
9031.90	Parts and accessories
	Other:
9031.90.70	Of articles of subheading 9031.80.40

While the instant merchandise appears to be clearly provided for in subheading 9031.80.40, HTSUS, according to GRI 1 we must first determine classification at the 4-digit heading level. The ENs to heading 9031, HTSUS, exclude from classification in that heading microscopes of headings 9011 or 9012, HTSUS. Microscopes of heading 9012, HTSUS, include “electron microscopes [which] differ from optical microscopes in that they use a beam of electrons instead of light rays.” EN 90.12(A). EN 90.12(A) states that the heading includes “scanning electron microscopes in which a very fine beam of electrons is directed repeatedly onto different points of the sample. Information is obtained by measuring, for example, the electrons transmitted, the secondary electrons emitted, or the optical rays. The result may then be displayed on a monitor screen which can be incorporated in the microscope.” The ENs also provide in part that the “electron microscope has many uses both in the field of pure science (biological or medical research, composition of matter, etc.), and in industrial technique (examination of fumes, dust, textile fibres, colloids, etc.; examination of the structure of metals, paper, etc.)” *Id.*

The MI-3080 CD-SEM is, at least in part, a scanning electron microscope, as evidenced by its name as well as its use of electron beams on various axes. While many standard scanning electron microscopes may utilize three axes for imaging, the instant microscope only rotates on two. However, scanning electron microscopes are now frequently used in the microelectronics industry for SEM-based metrology. *See, e.g.,* András Vladár, et al, “Is Your Scanning Electron Microscope Hi-Fi?” *Scanning: The Journal of Scanning Microscopies*, Vol 17, 287–295 (1995) (abstracted version). The SEMs used in the microelectronics industry function with varying numbers of axes, up to six or more.

The legal text of the heading “microscopes other than optical microscopes” is broad, explicitly excluding only one class of microscope (optical). The ENs buttress the breadth of the legal text by stating that electron microscopes for several uses in various fields of study are included in the heading. Moreover, there is no indication in the ENs that a specific number of axes are required of a SEM of heading 9012, HTSUS. The ENs regarding SEMs simply state the beams are “directed repeatedly onto different points of the sample.” Accordingly, the scope of the heading encompasses many

SEMs, including those designed for use in the semiconductor wafer industry. However, the instant merchandise is not just a SEM. It is a SEM fitted with equipment specifically designed for handling and transporting semiconductor wafers.

Note 3 to Chapter 90, HTSUS states that the provisions of Note 4 to Section XVI apply to Chapter 90. Section XVI, Note 4, HTSUS, provides, in relevant part that where a machine or combination of machines consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function then the whole falls to be classified in the heading appropriate to that function. Included in this note are "functional units," which are described in Part (VII) of the General ENs to Section XVI, which accordingly applies to Chapter 90. See Part (IV), General ENs, Chapter 90. In addition to reiterating the language in the legal note, the ENs on functional units per Section XVI, Note 4 state, in part, the following:

For the purposes of this Note, the expression "intended to contribute together to a clearly defined function" covers only machines and combinations of machines essential to the performance of the function specific to the functional unit as a whole, and thus excludes machines or appliances fulfilling auxiliary functions and which do not contribute to the function of the whole.

The MI-3080 CD-SEM consists of a SEM and handling and transport equipment which work together and are designed specifically to measure and evaluate the line, space, pitch and patterns of semiconductor wafers, a clearly defined function. Therefore, the MI-3080 CD-SEM constitutes a functional unit, which is classified according to its clearly defined function. As such, the exclusion of microscopes in EN 90.31 would not apply to this merchandise.

Heading 9031, HTSUS, provides for measuring and checking instruments, appliances and machines, not specified or included elsewhere in Chapter 90, HTSUS. By the terms of the heading, goods found to be described by any other heading in the chapter are not classifiable in heading 9031, HTSUS. The terms "measuring" and "checking" are not defined in the HTSUS or in the ENs. In *United States v. Corning Glass Works*, 66 CCPA 25, 27, 586 F.2d 822, 825 (1978), the court quoted definitions from *Webster's Third New International Dictionary*, 381 (1971) (in determining the scope of the provision for measuring and checking Instruments not specially provided for in the predecessor tariff schedule to the HTSUS). " 'Check' is defined as "to inspect and ascertain the condition of, especially in order to determine that the condition is satisfactory; * * * investigate and insure accuracy, authenticity, reliability, safety, or satisfactory performance of * * * ; to investigate and make sure about conditions or circumstances * * * ." The term "measure" is defined as follows: "[t]o ascertain the quantity, mass, extent, or degree of in terms of a standard unit or fixed amount * * * ; measure the dimensions of; take the measurements of * * * ; to compute the size of * * * from dimensional measurements." *Webster's Third New International Dictionary*, 1400 (1971). See HQ 965639, dated September 12, 2002; HQ 954682, July 14, 1994; HQ 950196, dated January 8, 1992.

The critical dimension measurements and evaluation of the lines, spaces and patterns of wafers performed by the MI-3080 CD-SEM clearly fall within the common meaning of measuring and checking. The measuring and checking functions are not simply a function of the microscope portion of the functional unit, but are the functions accomplished through the use of the different components together, fitted to accommodate one another. That is, each is essential to the performance of the function specific to the functional unit as a whole. That function is not covered elsewhere in Chapter 90, HTSUS.

When the U.S. entered into the Information Technology Agreement (ITA), which went into effect on July 1, 1997, Presidential Proclamation No. 7011; 62 FR 35909 (July 2, 1997), the U.S. notified the other signatories that it would classify "electron beam microscopes fitted with the equipment specifically designed for the handling and transport of semiconductor wafers or reticles" under subheading 9031.80.40, HTSUS. Under the ITA, the U.S. added other provisions which included microscopes fitted with "equipment specifically designed for the handling and transport of semi-

conductor wafers or reticles" under various provisions of heading 9031, HTSUS, such as optical stereoscopic microscopes and photomicrographic microscopes "fitted with equipment specifically designed for the handling and transport of semiconductor wafers or reticles" under subheading 9031.41.00, HTSUS. This latter provision was discussed in HQ 959109, dated October 5, 1998.

In HQ 959109, we classified two binocular microscopes designed for examining photomasks and semiconductor wafers in heading 9011, HTSUS. Though the merchandise at issue was entered prior to the ITA, Customs discussed the relevance of the ITA with respect to the merchandise at issue. The microscopes, in their condition as imported, could not perform any measuring or checking function as they did not measure a quantity or check against a standard. Further, the stands and specimen stages with which they were fitted were not deemed "specifically designed for the handling and transport * * *" because the stage equipment was no more than that which might ordinarily be part of those types of microscopes in heading 9011, HTSUS. That is, they simply held a wafer in place. See *Carl Zeiss, Inc. v. United States*, 16 F. Supp. 2d 1097 (CIT 1998), *aff'd* 195 F. 3d 1375, (Fed. Cir. 1999).

As discussed above, the instant merchandise performs measuring and checking functions upon importation and is comprised of a complete functional unit. Unlike the microscopes at issue in HQ 959109, the cassette-to-cassette auto loading equipment is fitted equipment specifically designed for the handling and transport of semiconductor wafers and reticles. Thus, the merchandise exceeds the scope of heading 9012, HTSUS. MI-3080 CD-SEM is within the scope of measuring and checking instruments, appliances and machines of heading 9031, HTSUS. As such, the MI-3080 CD-SEM is classified in subheading 9031.80.40, HTSUS. Because we find that the MI-3080 CD-SEM is a good of subheading 9031.80.40, HTSUS, it is not classified in subheading 9031.90.70, HTSUS. Moreover, as there are no optical elements present, we need not consider subheading 9031.41.00, HTSUS.

In HQ 962435 we classified the instant product in subheading 9012.10.00, HTSUS. We stated the following:

[T]he MI-3080 is an electron beam microscope fitted with equipment specifically designed for handling and transport of semiconductor wafers. The protestant provided descriptive literature for model MI-4080, another system which it described as the current instrument with some minor improvements. This literature states that "all chips on a 200 mm wafer can be fully automatically measured up to magnifications of 100,000X and 200,000X * * *." The multiple measurement function allows the high-speed and many points automated measurements within one SEM image. There is no clear indication of what the handling and transport equipment consists of or its function. Nevertheless, it is hard to see how the addition of elements that do no measuring or checking, just precision handling, can convert a microscope.

Microscopes by their very nature perform measuring and checking. This was the basis for the foregoing rationale. It was not clear to us at that time that the functions of the combination of equipment together exceeded the scope of a microscope of heading 9012, HTSUS, by the application of Note 4 to Section XVI, HTSUS. As such, a CD-SEM fitted with the equipment specifically designed for the handling and transport of semiconductor wafers in its condition as imported is not subject to the exclusion of microscopes from heading 9031, HTSUS. At present, Customs is reviewing a product which we have determined is substantially similar to the MI-3080 CD-SEM. In reviewing that product, we now believe our statement, excerpted above, that there was "no clear indication of what the handling and transport equipment consists of or its function" is incorrect and does not represent the proper avenue of analysis of goods of this kind. Accordingly, HQ 962435 is revoked.

Under *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of Protest 1001-98-102442 was final on both the protestant and U.S. Customs and Border Protection. Therefore, this decision has no effect on those entries.

HOLDING:

The Model MI-3080 Measurement and Inspection Scanning Electron Microscope is classified in subheading 9031.80.40, HTSUS, which provides for "Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof: Other instruments, appliances and machines: Electron beam microscopes fitted with the equipment specifically designed for the handling and transport of semiconductor wafers or reticles."

EFFECT ON OTHER RULINGS:

HQ 962435, dated December 15, 1999, is hereby REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

