

Bureau of Customs and Border Protection

General Notices

QUARTERLY IRS INTEREST RATES USED IN CALCULATING INTEREST ON OVERDUE ACCOUNTS AND REFUNDS ON CUSTOMS DUTIES

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

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning July 1, 2003, the interest rates for overpayments will be 4 percent for corporations and 5 percent for non-corporations, and the interest rate for underpayments will be 5 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278; telephone 317/298-1200, extension 1349.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the

Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2003-63 (*see*, 2003-25 IRB 1037, dated June 23, 2003), the IRS determined the rates of interest for the calendar quarter beginning July 1, 2003, and ending September 30, 2003. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). For corporate overpayments, the rate is the Federal short-term rate (2%) plus two percentage points (2%) for a total of four percent (4%). For overpayments made by non-corporations, the rate is the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). These interest rates are subject to change for the calendar quarter beginning October 1, 2003, and ending December 31, 2003.

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

<i>Beginning Date</i>	<i>Ending Date</i>	<i>Under- payments (percent)</i>	<i>Over- payments (percent)</i>	<i>Corporate Over- payments (Eff. 1-1-99) (percent)</i>
070174	063075	6%	6%	
070175	013176	9%	9%	
020176	013178	7%	7%	
020178	013180	6%	6%	
020180	013182	12%	12%	
020182	123182	20%	20%	
010183	063083	16%	16%	
070183	123184	11%	11%	
010185	063085	13%	13%	
070185	123185	11%	11%	
010186	063086	10%	10%	
070186	123186	9%	9%	
010187	093087	9%	8%	
100187	123187	10%	9%	
010188	033188	11%	10%	
040188	093088	10%	9%	
100188	033189	11%	10%	
040189	093089	12%	11%	
100189	033191	11%	10%	
040191	123191	10%	9%	
010192	033192	9%	8%	
040192	093092	8%	7%	
100192	063094	7%	6%	
070194	093094	8%	7%	
100194	033195	9%	8%	

<i>Beginning Date</i>	<i>Ending Date</i>	<i>Under- payments (percent)</i>	<i>Over- payments (percent)</i>	<i>Corporate Over- payments (Eff. 1-1-99) (percent)</i>
040195	063095	10%	9%	
070195	033196	9%	8%	
040196	063096	8%	7%	
070196	033198	9%	8%	
040198	123198	8%	7%	
010199	033199	7%	7%	6%
040199	033100	8%	8%	7%
040100	033101	9%	9%	8%
040101	063001	8%	8%	7%
070101	123101	7%	7%	6%
010102	123102	6%	6%	5%
010103	093003	5%	5%	4%

Dated: June 30, 2003

ROBERT C. BONNER,
*Commissioner,
Customs and Border Protection.*

[Published in the Federal Register, July 7, 2003 (68 FR 40279)]

AGENCY INFORMATION COLLECTION ACTIVITIES:
HARBOR MAINTENANCE FEE

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Harbor Maintenance Fee. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19557-19558) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 31, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Harbor Maintenance Fee

OMB Number: 1651-0055

Form Number: Forms 349 and 350

Abstract: This collection of information will be used to verify that the Harbor Maintenance Fee paid is accurate and current for each individual, importer, exporter, shipper, or cruise line.

Current Actions: This submission is being submitted to extend the expiration date with a change to the burden hours.

Type of Review: Extension (with change)

Estimated Number of Respondents: 5,200

Estimated Time Per Respondent: 40 minutes

Estimated Total Annual Burden Hours: 2,816

Estimated Total Annualized Cost on the Public: \$42,240

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: June 23, 2003

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, July 1, 2003 (68 FR 39109)]

AGENCY INFORMATION COLLECTION ACTIVITIES:
CONDITIONALLY FREE UNDER CONDITIONS
OF EMERGENCY

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Conditionally Free Under Conditions of Emergency. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 20396) on April 25, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 31, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written

comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Free Admittance Under Conditions of Emergency

OMB Number: 1651-0044

Form Number: N/A

Abstract: This collection of information will be used in the event of emergency or catastrophic event to monitor goods temporarily admitted for the purpose of rescue or relief.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1

Estimated Time Per Respondent: 1 minute

Estimated Total Annual Burden Hours: 1

Estimated Total Annualized Cost on the Public: N/A

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: June 23, 2003

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

NEW DATE FOR OCTOBER 2003 CUSTOMS BROKERS
LICENSE EXAMINATION

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

ACTION: General notice

SUMMARY: This document announces that Customs and Border Protection has changed the date on which the semi-annual written examination for an individual's broker's license will be held in October 2003.

DATES: The customs broker's license examination scheduled for October 2003 will be held on Tuesday, October 7.

FOR FURTHER INFORMATION CONTACT: Alice Buchanan, Office of Field Operations (202-927-2673)

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 641 of the Tariff Act of 1930, as amended (19 U.S.C. 1641), provides that a person (an individual, corporation, association, or partnership) must hold a valid customs broker's license and permit in order to transact customs business on behalf of others, sets forth standards for the issuance of broker's licenses and permits, and provides for the taking of disciplinary action against brokers that have engaged in specified types of infractions. In the case of an applicant for an individual broker's license, section 641 provides that an examination may be conducted to determine the applicant's qualifications for a license.

The regulations issued under the authority of section 641 are set forth in part 111 of the Customs Regulations (19 CFR part 111). Part 111 includes detailed rules regarding the licensing of, and granting of permits to, persons desiring to transact customs business as customs brokers, including the qualifications required of applicants and the procedures for applying for licenses and permits. Section 111.11 sets forth the basic requirements for a broker's license and, in paragraph (a)(4), provides that an applicant for an individual broker's license must attain a passing grade on a written examination taken within the 3-year period before submission of the license application prescribed under § 111.12. Section 111.13 sets forth the requirements and procedures for the written examination for an individual broker's license. Paragraph (b) of § 111.13 concerns the date and place of the examination and, prior to the recent amendment to the Customs Regulations discussed below, provided that written customs broker license examinations were given on the first Monday in April and October.

Recognizing that the first Monday in October 2003 (October 6) coincides with the observance of Yom Kippur, Customs and Border Protection (CBP) published in the **Federal Register** (68 FR 31976) on May 29, 2003, an interim rulemaking allowing for the adoption of alternative examination dates in order to avoid conflicts with national holidays, religious observances, and other foreseeable events. Section 111.13(b) was amended to provide that CBP, in those circumstances, could publish a notice in the Federal Register changing the examination date from its usual timing. Accordingly, this document announces that CBP has scheduled the October 2003 customs broker's license examination for Tuesday, October 7.

Dated: June 30, 2003

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

[Published in the Federal Register, July 7, 2003 (68 FR 40282)]

AGENCY INFORMATION COLLECTION ACTIVITIES:
DECLARATION FOR FREE ENTRY OF RETURNED
AMERICAN PRODUCTS

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Declaration for Free Entry of Returned American Products. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 20396–20397) on April 25, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 6, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of

Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Treasury Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-7285.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Declaration of Free entry of Returned American Products
OMB Number: 1651-0011

Form Number: Form-3311

Abstract: This collection of information is used as a supporting documents which substantiates the claim for duty free status for returning

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit, Individuals.

Estimated Number of Respondents: 12,000

Estimated Time Per Respondent: 210 minutes

Estimated Total Annual Burden Hours: 51,000

Estimated Total Annualized Cost on the Public: \$198,000

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: June 26, 2003

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, July 7, 2003 (68 FR 40281)]

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

Washington, DC, July 2, 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.*

REVOCA-
TION OF CLASSIFICATION LETTER AND REVOCA-
TION OF TREATMENT RELATING TO CLASSIFICATION OF
FEATHER BOAS

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to the classification of feather boas.

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 revoking a ruling letter relating to the classification of feather boas 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. Notice of the proposed action was published on May 7, 2003 in the CUSTOMS BULLETIN in Volume 37, Number 19. One comment was received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 16, 2003.

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 Customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke New York Ruling Letter (NY) C88185, dated June 5, 1998, and to revoke any treatment accorded to substantially identical merchandise was published in the May 7, 2003 CUSTOMS BULLETIN, Volume 37, Number 19. Customs accepted one timely received comment in response to this notice. Further, it is noted that the Proposed Notice inadvertently had attached HQ 963561 dated January 24, 2002 (identified as “Attachment C”, but not referenced in the Notice). However, HQ 963561 is not affected by this recent publication.

In NY C88185 dated June 5, 1998, Customs classified a “Dazzling Dreams Feather Boa” as a festive article in subheading 9505.90.6000, Harmonized Tariff Schedule of the United States Annotated. In C88185, the boa’s classification was based on whether it was of a flimsy construction and lacking durability and generally not recognized as a normal apparel article. Upon review of this ruling, CBP has determined that the merchandise’s classification as a festive article was incorrect. Rather, Customs finds the classification should be as an article of feathers within heading 6701, HTSUSA. Accordingly, we are revoking NY C88185 to reflect proper classification within heading 6701, HTSUSA, as set forth in the analysis of HQ 965912 (see “Attachment” to this document).

In the one comment, an importer references HQ 965455 dated April 18, 2002 and notes that HQ 965455 stated that “dress-up sets are classified in subheading 9503.70, HTSUS.” The importer also adds that if dress-up sets are classified in subheading 9503.70, HTSUSA, then individual articles of dress-up sets would be classified in this respective subheading. We disagree. HQ 965455 clearly references EN 95.03, which states that “sets” are “two or more differ-

ent types of articles (principally for amusement), put up in the same packing for retail sale without repacking.” However, the boa of NY C88185 does not constitute a set as stated in the definition of dress-up sets of EN 95.03. Rather, it is an item that may be a part of a dress-up set of heading 9503, HTSUSA, provided when it is combined with other items of the set, generally toys, the articles create a “dress-up set” that is illustrative of the recreation or work of a person or profession. If the item is imported alone, it may be classified elsewhere. In this instance, the subject boa is imported alone, and thus it is not classifiable in subheading 9503, HTSUSA.

As stated in the notice of proposed revocation, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, have been 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 HTSUS. Any person involved with substantially identical merchandise should have advised CBP during the comment period. An importer’s reliance on treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY C88185, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965912, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by the CBP to substantially identical transactions.

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

DATED: June 25, 2003

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

Attachments

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965912
June 25, 2003
CLA-2 RR:CR:GC 965912 TF
CATEGORY: Classification
TARIFF NO.: 6701.00.3000

MR. KIM YOUNG
BDP INTERNATIONAL, INC.
2721 Walker NW
Grand Rapids, MI 49504

RE: Revocation of NY C88185; children's feather boa; Chapter 95, HTSUSA; *Midwest of Cannon Falls, Inc. v. United States*; HQ 963561, dated January 24, 2002

DEAR MR. YOUNG:

Pursuant to your request dated May 20, 1998 for a binding tariff classification ruling of certain children's feather boa on behalf of your client Meijer, Inc., Customs issued NY C88185, dated June 5, 1998. In NY C88185, Customs classified the subject children's feather boa as a festive article within subheading 9505.90.6000, Harmonized Tariff Schedule of the United States Annotated.

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

Pursuant to section 625(c), Tariff Act of 1930, as amended by section 623 of Title VI (customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub.L. 103-182, 107 Stat. 2057, 2186 (1993) notice of the proposed revocation of NY C88185 was published on May 7, 2003, in Vol. 37, No. 19 of the CUSTOMS BULLETIN. One timely received comment was submitted in response to this notice.

FACTS:

"Dazzling Dreams Feather Boa," item #862335, is made up of turkey feathers and measures five feet in length. The boa is available in purple, pink and white colors. It will be imported wrapped around a hanger-style cardboard for display purposes. It is indicated in the facts of NY C88185 that the article is marketed for use by children in playing "dress-up."

ISSUE:

What is the classification of the subject children's feather boa?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1, HTSUS, 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, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6, HTSUS, may be applied.

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System are the official interpretation of the Harmonized System at the international level. The ENs, although not dispositive provide a commentary on the scope of each heading of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Chapter 67, HTSUSA, provides for, among other things, articles made of feathers. Heading 6701, HTSUSA, provides for "[s]kins and other parts of birds with their feathers or down, feathers, parts of feathers, down and articles thereof (other than goods of heading 0505 and worked quills and scapes)." EN 67.01(B)(3) states that

heading 6701 includes “Trimmings made of birds, parts of birds, of feathers or down, for hats, **boas** [emphasis added], collars, capes or other articles of apparel or clothing accessories.”

Customs has previously classified feather boas within heading 6701, HTSUSA, see HQ 963561, dated January 24, 2002, referring to New York Ruling Letter NY A83686, dated July 3, 1996; Port Ruling Letter (PD) C83873, dated February 24, 1998; NY F80244, dated December 9, 1999; NY F82788, dated March 6, 2000; and NY F87231, dated June 15, 2000.

In HQ 963561, the importer contended that the boas were classifiable as festive articles under heading 9505, HTSUSA, on the basis that they were not apparel items, but Halloween costume accessories. The importer also claimed the boas were not the same as boas of heading 6701 because they were sold at a lower price, made of turkey feathers, lack substantial backing and when shaken, they would release dye when handled. In HQ 963561, Customs rejected the importer’s arguments and stated that in general, feather boas are not contemplated by the EN to heading 9505, HTSUSA.

An article may be classified in heading 9505 if it meets the “class or kind” criteria for festive articles as provided for in *Midwest of Cannon Falls, Inc. v. United States*, 122 F.3d 1423 (Fed. Cir. 1997). In this case, the Court addressed the scope of heading 9505, specifically the class or kind of merchandise termed “festive articles,” and provided new guidelines for classification of such goods in the heading. It then applied its conclusions to 29 specific articles to determine whether they were included within the scope of the class of “festive articles”. In general, merchandise is classifiable as a festive article in heading 9505, when the article, as a whole:

1. Is not predominately of precious or semiprecious stones, precious metal or metal clad with precious metal;
2. Functions primarily as a decoration or functional item used in the celebration of and for entertainment on a holiday; and
3. Is associated with or used on a particular holiday.

In this instance, although the subject boa is marketed for children to be used in playing “dress-up”, it fails to satisfy any of the *Midwest* criteria. We refer you to HQ 963561, which states, in pertinent part:

Feather boas are articles of feathers. Boas come in all sizes, lengths, colors and quality. All feather boas will be used the same way, regardless of quality, as an accessory or accent article to some outfit. Whether the feather boas [sic] is accessorizing a Las Vegas show girl, a Hollywood star, a Halloween beauty queen or a little girl’s dress up fantasy, it is being used the same way and should be classified uniformly.

Therefore, as the subject boa is not a festive article within heading 9505, and it is substantially similar to the boas in the aforementioned rulings, the subject boa is classifiable under subheading 6701.00.3000, HTSUSA, as an article of feathers.

For your reference, HQ 963561 is enclosed.

HOLDING:

NY C88185, dated June 5, 1998, is hereby revoked. Based on the foregoing, the feather boa is classifiable under subheading 6701.00.3000, HTSUSA, which is the provision for articles of feathers. The applicable rate of duty is 4.7 percent *ad valorem*.

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

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

REVOCATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO THE CLASSIFICATION OF INSU-
LATED FOOD OR BEVERAGE BAG/STADIUM SEAT CUSHION

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

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of any treatment relating to the classification of a combination insulated food or beverage bag and seat cushion.

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 CBP is revoking one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a combination insulated food or beverage bag and seat cushion. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed revocation of the ruling letter and revocation of treatment was published in the *Customs Bulletin*, dated April 16, 2003, Vol. 37, No. 16. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption September 16, 2003.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with CBP 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 CBP 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. section 1484), the importer of record is responsible for using reasonable care to enter,

classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on April 16, 2003, in the *Customs Bulletin*, Volume 37, Number 16, proposing to revoke one ruling letter pertaining to the tariff classification of a combination utility pack/cooler bag and seat cushion. No comments were received in reply to the notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise, which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised the CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY D85922, CBP ruled that the subject goods were classifiable within subheading 9404.90.2000, HTSUSA, which provides for "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Other." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. We have determined that this item is a composite article and should be classified pursuant to a GRI 3(b) analysis with the essential character of the article imparted by the insulated food or beverage bag and not the cushion component. As such, we find that the article is properly classified in subheading 4202.92, HTSUSA, which provides *eo nomine* for insulated food or beverage bags.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY D85922 and any other ruling not specifically identified that is contrary to the de-

termination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 965893 (Attachment). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice.

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

DATED: June 25, 2003

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

[Attachment]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 965893
June 25, 2003
CLA-2 RR:CR:TE 965893 ASM
CATEGORY: Classification
TARIFF NO.: 4202.92.1000

MS. LINNEA BUCHER
CARMICHAEL INTERNATIONAL SERVICE
533 Glendale Boulevard
Los Angeles, California 90026-5097

RE: Revocation of NY D85922: The tariff classification of a combination insulated food or beverage bag/stadium seat cushion from Thailand.

DEAR MS. BUCHER:

This is in reference to New York Ruling Letter (NY) D85922, issued to you on January 6, 1999. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes NY D85922 by providing the correct classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) for an article which combines an insulated food or beverage bag and a stadium seat cushion.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057 (1993), a notice of proposed revocation was published on April 16, 2003, in the *Customs Bulletin*, Volume 37, Number 16, proposing to revoke NY D85922, dated January 6, 1999, and to revoke the tariff treatment pertaining to the tariff classification of an insulated food or beverage bag/stadium seat cushion. No comments were received.

FACTS:

The subject goods are described as a combination utility pack/cooler bag and stadium seat cushion with an outer shell made from plastic coated woven nylon. According to the description contained in NY D85922, the item folds in the middle and possesses two handles and a detachable shoulder strap secured with plastic buckles used for carrying purposes. When folded, the utility side features two "Velcro"TM closing pockets, a zippered pocket and a mesh pocket for a 1 liter drink bottle. There are pockets on each side of the gusset, one with pen loops and the other with an elasticized umbrella pocket. The utility side has a zippered main compartment that is insulated

and lined with vinyl. The cushion side is comprised of a solid piece of foam and is inserted into the cover through a zippered opening. The blue stadium seat cushion measures approximately 13.5 inches x 15.5 inches when folded.

In NY D85922, Customs found that the subject goods were classified within subheading 9404.90.2000, HTSUSA, which provides for "Mattress supports; articles of bedding and similar furnishing (for example, mattresses, quilts, eiderdowns, cushions, pouffes and pillows) fitted with springs or stuffed or internally fitted with any material or of cellular rubber or plastics, whether or not covered: Other: Pillows, cushions and similar furnishings: Other."

ISSUE:

What is the proper classification for the merchandise?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In Headquarters Ruling Letter (HQ) 962297, dated April 5, 2002, an article identified as the "Adventure Pack" is described as a portable, soft-sided, insulated cooler bag, with a detachable stadium seat cushion. In HQ 962297, Customs determined that the "Adventure Pack" qualified as a composite good and applied a GRI 3(b) analysis. Thus, it was finally determined that the essential character of the merchandise was afforded by the insulated cooler bag and that the article was properly classified in subheading 4202.92.1000, HTSUSA, which provides for "***Insulated food or beverage bags: Other." As we noted in HQ 962297, pursuant to Presidential Proclamation 7515 of December 18, 2001, effective January 10, 2002, the term "insulated food or beverage bags" is now included in the text of heading 4202, HTSUSA.

In NY D85922 the subject article was also described as a combination cooler bag and stadium seat cushion with an outer shell made from plastic coated woven nylon. However, Customs erroneously classified the article pursuant to the pillow cushion or similar furnishing within subheading 9404.90.2000, HTSUSA. Thus, the basis for the revocation of NY D85922 is that HQ 962297 has set forth legal analysis which characterizes a substantially similar article as a "composite good" pursuant to a GRI 3(b) analysis and finally determined that the essential character of the article was represented by the insulated food or beverage bag component *not* the pillow/cushion component.

In view of the foregoing, it is our determination that NY D85922 incorrectly classified the combination cooler bag/stadium seat cushion. The article is a composite good and in applying a GRI 3(b) analysis we find that the essential character of the good is conveyed by the insulated food or beverage bag component which is *eo nomine* provided for in subheading 4202.92.10, HTSUSA. Finally, we are presuming that the article, which is described as having an outer shell made from plastic coated woven nylon, has an outer surface of plastic.

HOLDING:

The subject merchandise, identified in NY D85922 as a combination utility pack/cooler bag and stadium seat cushion, is correctly classified in subheading 4202.92.1000, HTSUSA, which provides for "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags,

sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Insulated food or beverage bags: Other". The general column one duty rate is 3.4 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY D85922, dated January 6, 1999, is REVOKED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

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

PROPOSED REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF SCRUB SHIRTS WITH POCKETS BELOW THE WAIST

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

ACTION: Notice of proposed revocation and modification of tariff classification ruling letters and revocation of treatment relating to the classification of scrub shirts with pockets below the waist.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke one ruling letter and modify one ruling letter, each relating to the tariff classification of scrub shirts with pockets below the waist under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP also proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before August 18, 2003.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be reviewed 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: Kelly Herman, Textiles Branch: (202) 572-8713.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. 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 CBP 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 CBP and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter and modify one ruling letter, each pertaining to the tariff classification of scrub shirts with pockets below the waist. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) F89127, dated July 27, 2000 (Attachment A) and to the modification of NY D80623, dated August 2, 1998 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should 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, Customs intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substan-

tially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY F89127, CBP ruled that a scrub shirt was classified in subheading 6206.30.3040, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other, Other: Women's." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. We have determined that the article is properly classified in subheading 6211.42.0056, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: Other."

In NY D80623, scrub pants and four scrub shirts were classified. CBP ruled that item number 7973 was classified in subheading 6206.30.3040, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other, Other: Women's;" and that item numbers 7331 and 7356 were classified in subheading 6206.40.3030, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt blouses: Of man-made fibers: Other: Other, Other: Women's." CBP has reviewed NY D80623, and with respect to these three scrub shirts, has determined that the ruling is in error. Item number 7973 is properly classified in subheading 6211.42.0056, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: Other." Item numbers 7331 and 7356 are classified in subheading 6211.43.0060, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY F89127, modify NY D80623 and to revoke or modify any other ruling not specifically identified, to reflect the proper classification of scrub shirts with pockets below the waist according to the analysis contained in proposed Headquarters Ruling Letters (HQ) 966393 and HQ 966546, set forth as Attachments C and D, respectively, to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

DATED: June 26, 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 F89127
July 27, 2000
CLA-2-62:RR:NC:3:353 F89127
CATEGORY: Classification
TARIFF NO.: 6206.30.3040

Mr. JOHN EDMONDSON
MEDSYSTEMS INTERNATIONAL
2362 James Dr.
Pittsburgh, PA 15237

RE: The tariff classification of a scrub shirt from Pakistan.

DEAR Mr. EDMONDSON:

In your letter dated June 16, 2000 you requested a classification ruling.

The submitted sample is a scrub shirt described as a nurse's tunic composed of woven 55% cotton/45% polyester fabric. The unisex item has short sleeves, V neckline, two patch pockets below the waist and a slit on each side at the bottom.

The applicable scrub shirt will be 6206.30.3040, Harmonized Tariff Schedule of the United States (HTS), which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other, Women's." The duty rate will be 15.8% *ad valorem*.

The scrub shirt falls within textile category designation 341. Based upon international textile trade agreements products of Pakistan are subject to quota and the requirement of a visa.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 212-637-7084.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY D80623
August 2, 1998
CLA-2-62:RR:NC:3:353 D80623
CATEGORY: Classification
TARIFF NO. 6206.40.3030; 6206.30.3040; 6204.63.3510:

MR. REX TSU
GOWN INDUSTRIES, INC.
20212 Rodrigues Ave.
Cupertino, CA 95014

RE: The tariff classification of scrub shirts and pants from Indonesia.

DEAR MR. TSU:

In your letter dated July 24, 1998, you requested a tariff classification ruling.

The submitted samples are unisex scrub shirts and pants used in the health care industry. Item No. 7331 is a scrub shirt consisting of woven 65% polyester/35% cotton fabric. The garment features a key neck, side vents and two pockets at the bottom. Item No. 7973 is a scrub shirt consisting of woven 55% cotton/45% polyester fabric. The garment features a criss-cross reversible scrub shirt with one breast and lower pocket on each side, and a scissors holder in the lower pocket. Item No. 7356 is a scrub shirt consisting of woven 65% polyester/ 35% cotton fabric. The garment features a button front with slanted lower pockets, and a scissors holder in the right pocket. Item No. 78735 is a scrub shirt consisting of woven 65% polyester/45% cotton fabric. The garment features a V-neck with one breast pocket. Item No. 78834 is a pair of scrub pants consisting of woven 65% polyester/35% cotton fabric. The item is reversible with a drawstring waist and one back pocket.

The applicable subheading for the Item Nos. 7331, 7356, 78735 will be 6206.40.3030, Harmonized Tariff Schedule of the United States (HTS), which provides for "Women's or girls' blouses, shirts and shirt blouses: Of man-made fibers: Other: Women's." The duty rate will be 27.9% *ad valorem*.

The applicable subheading for Item No. 7973 will be 6206.30.3040, Harmonized Tariff Schedule of the United States, (HTS), which provides for "Women's or girls' blouses, shirts and shirt blouses: Of cotton: Other: Other, Women's." The duty rate will be 16% *ad valorem*.

The applicable subheading for the scrub pants, Item NO. 78834 will be 6204.63.3510, 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, * * *: Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other: Other, Trousers and breeches: Women's." The duty rate will be 29.7% *ad valorem*.

Item Nos. 7331, 7356 and 78735 fall within textile category designation 641. Item No. 7973 falls with textile category 341 and a Item No. 78834 falls within textile category 648.

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 Kenneth Reidlinger at 212-466-5881.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
 BUREAU OF CUSTOMS AND BORDER PROTECTION,
 HQ 966393
 CLA-2 RR:CR:TE 966393 KSH
 TARIFF NO.: 6211.42.0056

Mr. JOHN EMONDSON
 MEDSYSTEMS INTERNATIONAL
 2362 James Drive
 Pittsburgh, PA 15237

RE: Revocation of New York Ruling Letter (NY) F89127, dated July 27, 2000; Classification of scrub type shirt; Heading 6211; Heading 6206

DEAR Mr. EDMONDSON:

New York Ruling Letter (NY) F89127 was issued to you on July 27, 2000, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUSA), of a scrub shirt. The article was classified in subheading 6206.30.3040, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other, Other: Women's." We have reviewed that ruling and have determined that the classification provided is incorrect. Therefore, this ruling revokes NY F89127.

FACTS:

The garment at issue is a scrub shirt described as a nurse's tunic composed of woven 55 percent cotton/ 45 percent polyester fabric. The unisex item has short sleeves, a V neckline, two patch pockets below the waist and a slit on each side at the bottom.

ISSUE:

Whether the scrub shirt at issue is classifiable under Heading 6211, HTSUSA, or Heading 6206, HTSUSA.

LAW AND ANALYSIS:

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

Heading 6206, HTSUSA, provides for women's or girls' blouses, shirts and shirt blouses. The EN to heading 6206, HTSUSA, state in pertinent part:

This heading covers the group of women's or girls' clothing, not knitted or crocheted, which comprises blouses, shirts and shirt-blouses.

This heading **does not cover** garments with pockets below the waist or with a ribbed waistband or other means of tightening at the bottom of the garment.

The garment at issue is a shirt. However, the garment has two patch pockets below the waist that preclude classification in heading 6206, HTSUSA. Consequently, the

garment is properly classifiable in heading 6211, HTSUSA, as a shirt excluded from heading 6206.

Customs has consistently classified similar merchandise in this manner. See e.g., NY I85818, dated September 20, 2002; NY G82878, dated November 15, 2000; NY G83396, dated November 7, 2000; and G83397, dated November 13, 2000.

HOLDING:

NY F89127, dated July 27, 2000, is hereby revoked. The scrub shirt is properly classifiable in subheading 6211.42.0056, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: Other." The general column one duty rate is 8.2 percent, *ad valorem*. The textile category designation is 341.

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 bi-lateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available we suggest you check, close to the time of shipment, the *Textile Status Report for Absolute Quotas*, available on the CBP website at www.cbp.gov.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966546
CLA-2 RR:CR:TE 966546 KSH
TARIFF NO.: 6211.42.0056; 6211.43.0060

MR. REX TSU
GOWN INDUSTRIES, INC.
20212 Rodrigues Avenue
Cupertino, CA 95014

RE: Modification of New York Ruling Letter (NY) D80623, dated August 2, 1998;
Classification of scrub shirts; Heading 6211; Not Heading 6206

DEAR MR. TSU:

New York Ruling Letter (NY) D80623 was issued to you on August 2, 1998, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUSA), of unisex scrub shirts and pants¹. Item number 7973 was classified in subheading 6206.30.3040, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of cotton: Other: Other: Women's;" and item numbers 7331 and 7356 were classified in subheading 6206.40.3030, HTSUSA, which provides for "Women's or girls' blouses, shirts and shirt-blouses: Of man-made fibers: Other: Other: Women's." We have reviewed this ruling and have determined that the classification of those three garments is incorrect. Therefore, this ruling modifies NY D80623.

¹Item number 78735 which was described as a scrub shirt with one breast pocket and Item number 78834 which were described as scrub pants were properly classified and are not the subject of this ruling.

FACTS:

In NY D80623, the garments at issue are described as unisex scrub shirts (item numbers 7331, 7356 and 7973). Item number 7331 is a scrub shirt consisting of woven 65% polyester/35% cotton fabric with a key neck, side vents and two pockets at the bottom. Item number 7356 is a scrub shirt consisting of woven 65% polyester/35% cotton fabric with a button front, slanted lower pockets and a scissors holder in the right pocket. Item number 7973 is a criss-cross reversible scrub shirt consisting of woven 55% cotton/45% polyester fabric with one breast and lower pocket on each side and a scissors holder in the lower pocket.

ISSUE:

Whether the scrub shirts at issue are classifiable under Heading 6211, HTSUSA, or Heading 6206, HTSUSA.

LAW AND ANALYSIS:

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

Heading 6206, HTSUSA, provides for women's or girls' blouses, shirts and shirt blouses. The EN to heading 6206, HTSUSA, state in pertinent part:

This heading covers the group of women's or girls' clothing, not knitted or crocheted, which comprises blouses, shirts and shirt-blouses.

This heading **does not cover** garments with pockets below the waist or with a ribbed waistband or other means of tightening at the bottom of the garment.

The garments at issue are shirts. However, each garment has two patch pockets below the waist that preclude classification in heading 6206, HTSUSA. Consequently, the garments are properly classified in heading 6211, HTSUSA, as shirts excluded from heading 6206.

Customs has consistently classified similar merchandise in this manner. See e.g., NY 185818, dated September 20, 2002; NY G82878, dated November 15, 2000; NY G83396, dated November 7, 2000; and G83397, dated November 13, 2000.

HOLDING:

NY D80623, dated August 2, 1998, is hereby modified. The scrub shirt identified by item number 7973 is properly classified in subheading 6211.42.0056, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206: Other." Item numbers 7331 and 7356 are classified in subheading 6211.43.0060, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers, Blouses, shirts and shirt-blouses, sleeveless tank styles and similar upper body garments, excluded from heading 6206." The general column one duty rates are 8.2 percent and 16.1 percent, *ad valorem*, respectively. The textile category designations are 341 and 641, respectively.

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 bi-lateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available we suggest you check, close to the time of shipment, the *Textile Status Report for Absolute Quotas*, available on the CBP website at www.cbp.gov.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF FOOTWEAR UPPERS

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

ACTION: Notice of proposed revocation of three tariff classification ruling letters, and the revocation of any treatment relating to the classification of footwear uppers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs & Border Protection (CBP) intends to revoke three ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of footwear uppers. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before August 18, 2003.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke three ruling letters relating to the tariff classification of certain footwear uppers. Although in this notice CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 958056, dated August 28, 1995 (Attachment A), HQ 958966, dated March 26, 1997 (Attachment B), and New York Ruling Letter (NY) H87189, dated February 15, 2002 (Attachment C), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the three identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

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

porter or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 958056 and HQ 958966, CBP classified leather shoe uppers in subheading 6406.10.1000, HTSUSA, which provides for "Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Uppers and parts thereof, other than stiffeners: Formed uppers: Of leather or composition leather: For other persons."

In NY H87189, Customs classified an upper to be used in boots in subheading 6406.10.50, HTSUSA, which provides, in part, for: "Parts of footwear * * * and parts thereof: Uppers and parts thereof, other than stiffeners: Formed Uppers: Other: Other."

Based on our analysis of the scope of the terms of subheadings 6406.10.1000, HTSUSA, 6406.10.1050, HTSUSA, 6406.10.6000, HTSUSA and 6406.10.6500, HTSUSA, the Legal Notes, and the Explanatory Notes, the footwear uppers subject to this notice that are of rubber or plastics, are properly classified in subheading 6406.10.6000, HTSUSA, which provides for "Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Uppers and parts thereof, other than stiffeners: Other: Of rubber or plastics." Those footwear uppers that are of leather are properly classified in subheading 6406.10.6500, which provides for "Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Uppers and parts thereof, other than stiffeners: Other: Of leather."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke HQ 958056, HQ 958966, and NY H87189, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966539 (Attachment D), HQ 966540 (Attachment E), and HQ 966148 (Attachment F). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: June 27, 2003

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 958056
August 28, 1995
CLA-2 R::M 958065 DFC
CATEGORY: Classification
TARIFF NO.: 6406.10.10

Ms. DIANE S. NICHOLS
COLE-HAAN
One Cole-Haan Drive
Yarmouth, ME 04096-1515

RE: Parts of footwear; Upper, formed; Additional U.S. Note 4 to Chapter 64; NYRL
8d,9675; HRL's 085573, 954790

DEAR Ms. NICHOLS:

This is in reference to your letter dated April 24, 1995, addressed to U.S. Customs Service, Portland, Maine, concerning the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS), of three styles of leather uppers imported from India. Your inquiry concerning sample "Buffalo" and "Nubuck" has been answered by New York Ruling Letter (NYRL) 809675 dated May 25, 1995. The question of the tariff classification of the shoe upper identified as sample "woven black" has been referred to this office for a response.

FACTS:

Sample "woven black" is a leather upper created from leather strips woven and shaped on a last, which is stitched to the bottom of a grain leather "underfoot," resulting in a fully closed bottom. A full length cardboard insole is then inserted into this upper and is held to it, in the rear, by multiple tacks through the bottom of the woven leather upper and grain leather "underfoot" into the cardboard. A round hole measuring approximately 2cm in diameter (the size of a nickel) has been cut out through the leather underfoot and the cardboard insole near the front of this upper's otherwise completely closed bottom.

ISSUE:

Is the upper "unformed" for tariff purposes?

LAW AND ANALYSIS:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that "classification shall be determined according to the terms of the headings and any relative section or chapter notes, and, provided such headings or notes do not otherwise require, according to [the remaining GRI's]." In other words, classification is governed first by the terms of the headings of the tariff and any relative section or chapter notes.

If the upper is "unformed," classification would be under subheading 6406.10.65, HTSUS, which provides for parts of footwear, uppers and parts thereof, other than stiffeners, other, other, of leather. The applicable rate of duty for this provision is 3% *ad valorem* or entitled to free entry under the Generalized System of Preferences, if otherwise qualified.

If the upper is "formed," it is classifiable under subheading 6406.10.10, HTSUS, which provides for parts of footwear, uppers and parts thereof, other than stiffeners, formed uppers, of leather or composition leather, for other persons. The applicable rate of duty for this provision is 10% *ad valorem*.

Additional U.S. Note 4 to Chapter 64, HTSUS, reads as follows:

4. Provisions of subheading 6406.10 for “*formed uppers*” cover uppers, with closed bottoms, which have been shaped by lasting, molding or otherwise but not by simply closing at the bottom.

In general, “*formed uppers*” includes all items which have a layer of material between most of the foot and the ground, and which, after lacing or buckling, if needed, will stay on the foot if worn in the condition as imported and which are shaped to fit the human foot. The sample submitted has been shaped by lasting, molding or otherwise to fit the human foot. However, you contend that the existence of the hole in the underfoot and cardboard insole prevents the “woven black” from being classified as a formed upper.

In the past, Customs has taken the position that moccasin style uppers with substantial openings cut out of the bottom are unformed uppers for tariff purposes. See Headquarters Ruling Letter (HRL) 085573 dated December 28, 1989. See also HRL 954790 dated September 28, 1993, wherein it was ruled that the term “[f]ormed uppers” does not include moccasin uppers with a significant sized hole (the size of a nickel or larger) in the bottom layer whether or not the upper is fully formed (lasted) unless the piece which will cover that opening is in the same shipment.

The shaping of the woven leather strips on a last and the inserting and tacking in place of a full length cardboard insole obviously results in a permanent shaping that goes far beyond “simply closing at the bottom.” However, the article does not have a completely “closed bottom” because after the upper was completed, the maker popped out a nickel sized hole through the leather underfoot and the cardboard insole. It is our position that the presence of the cardboard insole distinguishes the instant upper from those uppers lacking the cardboard insole. Consequently, due to the presence of the cardboard insole which permanently shapes the upper, we consider the upper to be “formed” even though the upper does not have a “closed bottom.”

HOLDING:

The “woven black” leather upper is considered “formed” for tariff purposes.

The “woven black” leather upper is classifiable under subheading 6406.10.10, HTSU[] as parts of footwear, uppers and parts thereof, other than stiffeners, formed uppers, of leather or composition leather, for other persons.

Marvin M. Amernick for JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 958966
March 26, 1997
CLA-2 RR:TC:TE 958966 ASM
CATEGORY: Classification
Tariff No.: 6406.10.1000

MR. RUSSEL BINNING
PIONEER SHOE CORPORATION
10788 Monte Vista Ave.
Ontario, CA 91762

RE: Tariff classification of leather shoe upper for work boot; Marking of finished work boot.

DEAR MR. BINNING:

This letter concerns the request for a binding ruling regarding the tariff classification of a leather shoe upper for a work boot (style #PSC-01) under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). In addition, you request

guidance as to the proper marking of the finished product after it has received further processing in the United States.

FACTS:

It is our understanding that the subject article, a leather shoe upper, has been manufactured in China as follows: the leather upper is fully cement lasted to a cardboard insole with a 1/4 inch thick full plastic-rubber midsole and a 1/2 inch thick partial heel. The PVC mid-sole filler has a 1-1/4 inch in diameter round hole cut in the bottom. You indicate that once these uppers are imported into the United States, additional materials and processing are required to close the bottom. Specifically, a twelve step injection carousel molds a thermal plastic outsole to the upper. You further indicate that this process requires a four man team of specially trained technicians and accounts for about 65% of the cost of the finished goods.

ISSUE:

1. What is the proper tariff classification under the HTSUSA for the product identified as a leather workboot upper?
2. What is the proper marking for the finished product, identified as a work boot (style # PSC-01)?

LAW AND ANALYSIS:

Classification of merchandise under the HTSUSA, is made in accordance with the General Rules of Interpretation (GRI's) and in accordance with 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's may then be applied.

If the upper is "unformed," classification would be under subheading 6406.10.6500, HTSUSA, which provides for parts of footwear, other, of leather. If the upper is "formed," it is classifiable under subheading 6406.10.1000, HTSUSA, which provides for parts of footwear with formed leather uppers. .

Additional U.S. Note 4 to Chapter 64, HTSUSA, provides:

4. Provisions of subheading 6406.10 for "formed uppers" cover uppers, with closed bottoms, which have been shaped by lasting, molding or otherwise but not by simply closing at the bottom.

It is your contention that the presence of a 1-1/4 inch diameter round hole cut in the bottom would prevent this product from being classified as a "formed upper" within the meaning of Additional U.S. Note 4 to Chapter 64, HTSUSA, because it has a substantial opening cut out of the bottom.

In Headquarters Ruling Letter (HQ) 958056, dated August 28, 1995, we stated that in general, "formed uppers" include all items which have a layer of material between most of the foot and the ground, and which after lacing or buckling, if needed, will stay on the foot if worn in the condition as imported and which are shaped to fit the human foot. The sample submitted to us in this case is an upper which has been completely shaped by lasting, molding, or otherwise to fit the human foot. Further, this upper would stay on the foot and provide ample protection to the wearer once laced.

You reference HQ 085573, dated December 28, 1989, in support of your contention that the subject boot upper has a "substantial opening" and should be considered an "unformed" upper. However, HQ 085573 can be distinguished from the present case because the uppers in that ruling had only received front-part lasting and there was no back-part lasting. In fact, HQ 085573 specifically noted that based on HQ 082075 (December 1, 1988), certain footwear uppers which were not back-part lasted and needed to be soaked, relasted and dried after importation to obtain the final shape, would not be considered formed uppers for tariff purposes. Thus, the basis for determining that the articles would be classified as unformed uppers under subheading 6406.10.6500, HTSUSA, was twofold; i.e., the sample uppers did not have closed bottoms and were not back-part lasted.

In the subject case, the leather upper has been both front and back-part lasted, and has a closed bottom sole that has been fully cement lasted to a cardboard insole. Although a 1-1/4 inch diameter round hole has been cut out of the sole, this upper has

received substantially more shaping and finishing than the footwear upper described in HQ 085573 which had neither a closed bottom sole nor back lasting.

In HQ 958056, issued August 28, 1995, it was determined that a woven black leather upper was a "formed" upper for tariff purposes. In this ruling, Customs stated that although a "nickel sized" hole had been popped out of the leather underfoot and the cardboard insole, the presence of a cardboard insole had permanently shaped this footwear upper. Thus, the upper was considered "formed" even though it did not have a "closed bottom." Such is the case with the subject boot upper which has a cardboard and rubber insole that permanently shapes the upper. Accordingly, we consider the upper to be "formed" even though the upper does not have a completely "closed bottom."

It is our understanding that all the manufacturing of this shoe will take place in China, prior to importation into the United States. Once in the U.S., a thermal plastic outsole is molded onto the shoe upper. We do not believe that this process is significant enough to have substantially transformed the good. Thus, the uppers are not excepted from marking and each upper must be marked "Made in China" at the time of importation into the U.S.

You note in your request that you would like to mark the shoes as follows: "Assembled in the U.S.A. with imported components." However, questions regarding the acceptability of such a marking on the finished shoe must be decided by the Federal Trade Commission (FTC), Division of Enforcement. The FTC has primary responsibility under statutes when a "Made in USA" claim can be made.

HOLDING:

The subject leather workboot upper (style # PSC-01), is classifiable under the sub-heading 6406.10.1000, HTSUSA, the provision for "Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Uppers and parts thereof, other than stiffeners: Formed uppers: Of leather or composition leather: For other persons" and is dutiable at 10% *ad valorem*.

Regarding the marking of the finished product, it is our determination that the additional processing in the United States does not substantially transform the product. Thus, each individual boot upper must be clearly marked "Made in China" on the tongue area of the boot and not on the midsole as in the sample. The marking must appear in an area where it will not be obscured by the attachment/molding of the outsole which will take place in the United States. The FTC has jurisdiction over "Made in the USA" claims and must decide whether or not such a marking is appropriate on the finished shoe. However, the "Made in China" marking must appear in close proximity to any claims regarding manufacture of the shoe in the United States.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION.
NY H87189
February 15, 2002
CLA-2-64:RR:NC:347:H87189
CATEGORY: Classification
TARIFF NO.: 6406.10.50

MR. JIM HOFFMAN
HOFFMAN BOOTS
100 E. Riverside

Kellogg, ID 83837

RE: The tariff classification of footwear uppers

DEAR MR. HOFFMAN:

In your letter dated January 16, 2002, you requested a tariff classification ruling for a rubber footwear upper. The item submitted with your ruling request is a molded rubber boot bottom which does not cover the ankle. The item has a substantial closed rubber underfoot which will be finished in the United States by application of a rubber outer sole, heel and logging "calks." The upper will also have a laced boot shaft and lining attached in the United States. A 3/4 inch hole has been drilled in the heel area of the underfoot of the item. Due to the absence of an outer sole, the item, as imported, is not considered "unfinished footwear" classified in subheadings 6401-6405 Harmonized Tariff Schedule of the United States (HTS). The issue to be addressed here is whether the 3/4 inch opening in the underfoot negates the language of Chapter 64, (HTS) Additional U.S. Note 4, which states:

Provisions of subheading 6406.10 for "formed uppers" cover uppers, with closed bottoms, which have been shaped by lasting, molding or otherwise but not by simply closing at the bottom.

On November 17, 1993, in the Customs Bulletin, Volume 27, Number 46, Customs published Treasury Decision (T.D.) 93-88, which contains certain footwear definitions used by Customs import specialists to classify footwear. The footwear definitions were provided merely as guidelines and, although consulted here, are not to be construed as Customs rulings. With regard to "formed uppers," T.D. 93-88 states, in pertinent part:

In general, provisions for "formed uppers" include all items which have a layer of material between most of the foot and the ground, and which, after lacing or buckling, if needed will stay on the foot if worn in the condition as imported and are shaped to fit the human foot.

In the subject case, the upper is shaped to fit the foot by molding. And will stay on the foot if worn in the condition as imported. The underfoot, although a 3/4 inch diameter round hole has been cut out, is a substantial layer of material between most of the foot and the ground. The molding process producing the upper imparts substantial shaping and finishing. In this regard the upper is considered a "formed upper" for classification purposes.

The applicable subheading for this item will be 6406.10.50 (HTS), which provides for parts of footwear, uppers and parts thereof, formed uppers, other, other. The general rate of duty will be 26.2 percent *ad valorem*.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist, Richard Foley at 646-733-3042.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966539
CLA-2:RR:CR:TE JFS
CATEGORY: Classification
TARIFF NO.: 6406.10.6500

Ms. DIANE S. NICHOLS
COLE-HAHN
One Cole-Hahn Drive

Yarmouth, ME 04096-1515

Re: Revocation of HQ 958056; Not Formed Uppers

DEAR Ms. NICHOLS:

This is to notify you that the Bureau of Customs and Border Protection (CBP) has reconsidered Headquarters Ruling Letter (HQ) 958056, issued to you August 28, 1995, wherein CBP classified a leather shoe upper in subheading 6406.10.1000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). For the reasons that follow, this ruling revokes HQ 958056.

FACTS:

In HQ 958056, the shoe upper under consideration was described as follows:

Sample "woven black" is a leather upper created from leather strips woven and shaped on a last, which is stitched to the bottom of a grain leather "underfoot," resulting in a fully closed bottom. A full length cardboard insole is then inserted into this upper and is held to it, in the rear, by multiple tacks throughout the bottom of the woven leather upper and grain leather "underfoot" into the cardboard. A round hole measuring approximately 2 cm in diameter (the size of a nickel) has been cut out through the leather underfoot and the cardboard insole near the front of this upper's otherwise completely closed bottom.

The upper was classified in subheading 6406.10.1000, HTSUSA, which provides for "Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Uppers and parts thereof, other than stiffeners: Formed uppers: Of leather or composition leather: For other persons."

ISSUE:

Whether the fully shaped upper with a nickel-sized hole cut out of the bottom is a "formed" upper?

LAW AND ANALYSIS:

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

Additional U.S. Note 4 to chapter 64, HTSUS, provides as follows:

Provisions of subheading 6406.10 for "formed uppers" cover uppers, with closed bottoms, which have been shaped by lasting, molding or otherwise but not by simply closing at the bottom.

In HQ 958056, CBP classified the leather upper, which was stitched to an underfoot with a cardboard insole that had a nickel-sized hole in it, as a formed upper. CBP found that the lasting and the full-length cardboard insole resulted in a permanent shaping that went far beyond "simply closing at the bottom." CBP further concluded that "due to the presence of the cardboard insole which permanently shapes the up-

per, we consider the upper to be 'formed' even though the upper does not have a 'closed bottom.'

In HQ 958966, dated March 26, 1997, CBP relied on HQ 958056 when classifying an upper that was fully shaped by cement lasting. The only issue was whether, by virtue of a 1-1/4 inch hole cut out of the mid-sole, the upper was considered to have a bottom that was not closed. CBP ruled that the upper, which was front and back lasted, and had a plastic and cardboard midsole, was a formed upper despite the a 1-1/4 inch hole in the bottom. CBP reasoned that the upper received substantially more shaping and finishing than the upper considered in HQ 958056.

HQ 958966 and HQ 958056, however, are inconsistent with a majority of our rulings on formed uppers. In HQ 561499, dated November 26, 2001, CBP ruled on the country of origin of a leather sandal manufactured by Dr. Martens™. The uppers of the sandal were shaped and attached to a completely closed plastic footbed. Although the upper was not lasted, CBP found that the upper had been sufficiently "shaped" to be considered a "formed" upper. CBP also ruled on an alternative construction process wherein the plastic footbed had a nickel-sized hole cut out of the footbed and mid-sole that would be plugged after importation. Relying upon Additional U.S. Note 4 to Chapter 64; HQ 087458, dated September 19, 1990; HQ 085573, dated December 28, 1989; and HQ 085291, dated March 1, 1990; CBP ruled that because of the hole in the footbed, the uppers did not have "closed bottoms." Thus, even though the uppers were shaped, the uppers were considered "Other" than formed. Therefore, two requirements must be met in order for an upper to be considered formed; (1) the upper material must be shaped, and (2) the bottoms must be completely closed. CBP's decision in HQ 561499, is consistent with NY F88270, dated 6/16/00, NY F86334, dated 5/4/00, NY F82881, dated 2/28/00, NY F82848, dated 2/28/00, and NY E88143, dated 11/10/99. In these rulings, CBP found that, but for the hole in each of the bottoms, the uppers would have been considered "formed."

CBP has generally held that if the bottoms of uppers had a hole cut out of them, they were not closed and the uppers were not considered to be formed uppers. See NY 887332, dated July 15, 1993 (leather upper fully lasted to cardboard insole, which is then mostly cut out ruled to be not formed); HQ 089764, dated August 15, 1991 (upper that was front lasted, but not back lasted, and had two holes in the bottom ruled to be not formed); HQ 088483, dated March 19, 1991 (unlasted upper with 3 inch long hole in bottom ruled as not being formed); HQ 085291, dated March 1, 1990 (moccasins with opening in bottoms ruled as not being formed); and HQ 085573, dated December 12, 1989 (leather uppers with opening cut out of bottoms ruled as not being formed).

In HQ 561499 (Dr. Martens™) CBP strictly interpreted Note 4(a), finding that a nickel-sized hole in the footbed and mid-sole of an otherwise formed upper causes the upper to be considered other than formed. In contrast, in HQ 958966 and HQ 958056 CBP overlooked the closed bottoms requirement because the uppers were substantially shaped and attached to a footbed. However, Note 4(a) does not specify an amount of shaping the upper must undergo before bottoms that are not closed will be disregarded. Accordingly, we follow the rationale of our ruling in HQ 561499 and find that the upper classified in HQ 958056 is not a "formed upper" because it does not have a closed bottom. Concurrent with this ruling, CBP is also revoking HQ 958966, and New York Ruling Letter H82672, dated June 25, 2001.

HOLDING:

HQ 958056, dated August 28, 1995, is hereby revoked. The subject merchandise is classified in subheading 6406.10.6500, HTSUSA, which provides, for "Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Uppers and parts thereof, other than stiffeners: Other: Of leather." The general column one duty rate is Free.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966540
CLA-2:RR:CR:TE JFS
CATEGORY: Classification
TARIFF NO.: 6406.10.6500

MR. RUSSEL BINNING
PIONEER SHOE CORP.
10788 Monte Vista Ave.
Ontario, CA 91763

Re: Revocation of HQ 958966; Not Formed Uppers

DEAR MR. BINNING:

This is to notify you that the Bureau of Customs and Border Protection (CBP) has reconsidered Headquarters Ruling Letter (HQ) 958966, issued to you March 26, 1997, wherein CBP classified a leather shoe upper for a work boot in subheading 6406.10.1000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). For the reasons that follow, this ruling revokes HQ 958966.

FACTS:

In HQ 958966, the shoe upper under consideration was described as follows:

[T]he leather upper is fully cement lasted to a cardboard insole with a 1/4 inch thick full plastic-rubber midsole and a 1/2 inch thick partial heel. The PVC midsole filler has a 1-1/4 inch in diameter round hole cut in the bottom. You indicate that once these uppers are imported into the United States, additional materials and processing are required to close the bottom. Specifically, a twelve step injection carousel molds a thermal plastic outsole to the upper. You further indicate that this process requires a four man team of specially trained technicians and accounts for about 65% of the cost of the finished goods.

The upper was classified in subheading 6406.10.1000, HTSUSA, which provides for "Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Uppers and parts thereof, other than stiffeners: Formed uppers: Of leather or composition leather: For other persons."

ISSUE:

Whether the fully shaped upper with a 1-1/4 inch hole cut out of the bottom is a "formed" upper?

LAW AND ANALYSIS:

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

Additional U.S. Note 4 to chapter 64, HTSUS, provides as follows:

Provisions of subheading 6406.10 for "*formed uppers*" cover uppers, with closed bottoms, which have been shaped by lasting, molding or otherwise but not by simply closing at the bottom.

The upper under consideration in HQ 958966 was fully shaped by cement lasting. Thus, the only issue was whether, by virtue of the 1-1/4 inch hole cut out of the midsole, the upper was considered to have a bottom that was not closed. CBP relied on HQ 958056, dated August 28, 1995, to rule that the upper, which was front and back lasted, and had a plastic and cardboard midsole, was a formed upper despite a hole in the bottom. CBP reasoned that the upper received substantially more shaping and

finishing than the upper considered in HQ 958056. In HQ 958056, CBP classified a leather upper that was stitched to an underfoot with a cardboard insole that had a nickel-sized hole in it, as a formed upper. CBP found that the lasting and the full-length cardboard insole resulted in a permanent shaping that went far beyond "simply closing at the bottom." CBP further concluded that "due to the presence of the cardboard insole which permanently shapes the upper, we consider the upper to be 'formed' even though the upper does not have a 'closed bottom.'"

HQ 958966 and HQ 958056, however, are inconsistent with a majority of our rulings on formed uppers. In HQ 561499, dated November 26, 2001, CBP ruled on the country of origin of a leather sandal manufactured by Dr. MartensTM. The uppers of the sandal were shaped and attached to a completely closed plastic footbed. Although the upper was not lasted, CBP found that the upper had been sufficiently "shaped" to be considered a "formed" upper. CBP also ruled on an alternative construction process wherein the plastic footbed had a nickel-sized hole cut out of the footbed and mid-sole that would be plugged after importation. Relying upon Additional U.S. Note 4 to Chapter 64; HQ 087458, dated September 19, 1990; HQ 085573, dated December 28, 1989; and HQ 085291, dated March 1, 1990; CBP ruled that because of the hole in the footbed, the uppers did not have "closed bottoms." Thus, even though the uppers were shaped, the uppers were considered "Other" than formed. Therefore, two requirements must be met in order for an upper to be considered formed; (1) the upper material must be shaped, and (2) the bottoms must be completely closed. CBP's decision in HQ 561499, is consistent with NY F88270, dated 6/16/00, NY F86334, dated 5/4/00, NY F82881, dated 2/28/00, NY F82848, dated 2/28/00, and NY E88143, dated 11/10/99. In these rulings, CBP found that, but for the hole in each of the bottoms, the uppers would have been considered "formed."

CBP has generally held that if the bottoms of uppers had a hole cut out of them, they were not closed and the uppers were not considered to be formed uppers. See NY 887332, dated July 15, 1993 (leather upper fully lasted to cardboard insole, which is then mostly cut out ruled to be not formed); HQ 089764, dated August 15, 1991 (upper that was front lasted, but not back lasted, and had two holes in the bottom ruled to be not formed); HQ 088483, dated March 19, 1991 (unlasted upper with 3 inch long hole in bottom ruled as not being formed); HQ 085291, dated March 1, 1990 (moccasins with opening in bottoms ruled as not being formed); and HQ 085573, dated December 12, 1989 (leather uppers with opening cut out of bottoms ruled as not being formed).

In HQ 561499 (Dr. MartensTM) CBP strictly interpreted Note 4(a), finding that a nickel-sized hole in the footbed and mid-sole of an otherwise formed upper causes the upper to be considered other than formed. In contrast, in HQ 958966 and HQ 958056 CBP overlooked the closed bottoms requirement because the uppers were substantially shaped and attached to a footbed. However, Note 4(a) does not specify an amount of shaping the upper must undergo before bottoms that are not closed will be disregarded. Accordingly, we follow the rationale of our ruling in HQ 561499 and find that the upper classified in HQ 958966 is not a "formed upper" because it does not have a closed bottom. Concurrent with this ruling, CBP is also revoking HQ 958056, and New York Ruling Letter H82672, dated June 25, 2001.

HOLDING:

HQ 958966, dated March 26, 1997, is hereby revoked. The subject merchandise is classified in subheading 6406.10.6500, HTSUSA, which provides, for "Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Uppers and parts thereof, other than stiffeners: Other: Of leather." The general column one duty rate is Free.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966148
CLA-2:RR:CR:TE 966148 JFS
CATEGORY: Classification
TARIFF NO.: 6406.10.6000

MR. JIM HOFFMAN
HOFFMAN BOOTS
100 E. Riverside
Kellogg, ID 83837

Re: Revocation of NY H87189; Not Formed Uppers

DEAR MR. HOFFMAN:

This is in response to your request for reconsideration of New York Ruling Letter (NY) H87189, dated February 15, 2002, wherein the Bureau of Customs and Border Protection (CBP) classified uppers to be used in the manufacture of boots in subheading 6406.10.50, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). For the reasons that follow, this ruling revokes NY H87189.

FACTS:

The article under consideration is an upper used in the construction of heavy-duty boots known as "calks" that are worn by loggers in the logging industry. The upper is fully lasted and is attached to a footbed that is composed of four layers. Attached to the footbed is a mid-sole that is composed of rubber that is 1/4 of an inch thick. A 3/4 inch diameter hole has been cut through the footbed and midsole. This hole will be plugged after the upper is imported into the United States.

On June 25, 2001, CBP issued H82672 to Tower Group International, on behalf of Hoffman Boots. The upper under consideration in that ruling was nearly identical to the instant upper, except that it did not have a hole punched out of the heel portion of the footbed and mid-sole. CBP classified that upper as a "formed upper" in subheading 6406.10.50, HTSUSA, with a duty rate of 26.2 percent *ad valorem*.

In NY H87189, the subject upper was also considered to be "formed" and was classified in subheading 6406.10.50, HTSUSA, which provides, in part, for: "Parts of footwear * * * and parts thereof: Uppers and parts thereof, other than stiffeners: Formed Uppers: Other: Other."

You contend the upper with the hole should be classified in subheading 6406.10.6000, HTSUSA, which provides, in part, for Parts of footwear * * * and parts thereof: Uppers and parts thereof, other than stiffeners: Other: Of rubber or plastics. The general column one rate of duty is Free.

ISSUE:

Whether the fully shaped upper with a nickel-sized hole cut out of the bottom is a "formed" upper.

LAW AND ANALYSIS:

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

Additional U.S. Note 4 to chapter 64, HTSUS, provides as follows:

Provisions of subheading 6406.10 for "*formed uppers*" cover uppers, with closed bottoms, which have been shaped by lasting, molding or otherwise but not by simply closing at the bottom.

The instant upper has been fully shaped by lasting and molding. Thus, the only issue is whether, by virtue of the nickel-sized hole cut out of the footbed and mid-sole, the upper is considered to have a bottom which is not closed.

In NY H87189, BCP classified the subject upper as a “formed” upper, reasoning that the upper was fully shaped and that the hole in the bottom of the upper did not transform it from a formed upper into an upper that was not formed. This reasoning is consistent with two Headquarters Ruling Letters (HQ) 958966, dated March 26, 1997, and HQ 958056, dated August 28, 1995. In HQ 958966, CBP relied on HQ 958056, to rule that an upper that had been front and back lasted and that had a plastic and cardboard midsole with a 1-1/4 inch hole, was a formed upper. CBP reasoned that the upper had received substantially more shaping and finishing than the upper considered in HQ 958056. In HQ 958056, CBP classified a leather upper that was stitched to an underfoot with a cardboard insole that had a nickel-sized hole in it, as a formed upper. CBP found that the lasting and the full-length cardboard insole resulted in a permanent shaping that went far beyond “simply closing at the bottom.” CBP further concluded that “due to the presence of the cardboard insole which permanently shapes the upper, we consider the upper to be ‘formed’ even though the upper does not have a ‘closed bottom.’”

However, these two rulings are inconsistent with a majority of our rulings on formed uppers. In HQ 561499, dated November 26, 2001, CBP ruled on the country of origin of a leather sandal manufactured by Dr. Martens™. The uppers of the sandal were shaped and attached to a completely closed plastic footbed. Although the upper was not lasted, CBP found that the upper had been sufficiently “shaped” to be considered a “formed” upper. CBP also ruled on an alternative construction process wherein the plastic footbed had a nickel-sized hole cut out of the footbed and mid-sole that would be plugged after importation. Relying upon Additional U.S. Note 4 to Chapter 64; HQ 087458, dated September 19, 1990; HQ 085573, dated December 28, 1989; and HQ 085291, dated March 1, 1990; CBP ruled that because of the hole in the footbed, the uppers did not have “closed bottoms.” Thus, even though the uppers were shaped, the uppers were considered “Other” than formed. Therefore, two requirements must be met in order for an upper to be considered formed; (1) the upper material must be shaped, and (2) the bottoms must be completely closed. CBP’s decision in HQ 561499, is consistent with NY F88270, dated 6/16/00, NY F86334, dated 5/4/00, NY F82881, dated 2/28/00, NY F82848, dated 2/28/00, and NY E88143, dated 11/10/99. In these rulings, CBP found that, but for the hole in each of the bottoms, the uppers would have been considered “formed.”

CBP has generally held that if the bottoms of uppers had a hole cut out of them, they were not closed and the uppers were not considered to be formed uppers. See NY 887332, dated July 15, 1993 (leather upper fully lasted to cardboard insole, which is then mostly cut out ruled to be not formed); HQ 089764, dated August 15, 1991 (upper that was front lasted, but not back lasted, and had two holes in the bottom ruled to be not formed); HQ 088483, dated March 19, 1991 (unlasted upper with 3 inch long hole in bottom ruled as not being formed); HQ 085291, dated March 1, 1990 (moccasins with opening in bottoms ruled as not being formed); and HQ 085573, dated December 12, 1989 (leather uppers with opening cut out of bottoms ruled as not being formed).

In HQ 561499 (Dr. Martens™) CBP strictly interpreted Note 4(a), finding that a nickel-sized hole in the footbed and mid-sole of an otherwise formed upper causes the upper to be considered other than formed. In contrast, in HQ 958966 and HQ 958056 CBP overlooked the closed bottoms requirement because the uppers were substantially shaped and attached to a footbed. However, Note 4(a) does not specify an amount of shaping the upper must undergo before bottoms that are not closed will be disregarded. Accordingly, we follow the rationale of our ruling in HQ 561499 and find that the instant upper is not a “formed upper” because it does not have a closed bottom. Concurrent with this ruling, CBP is also revoking HQ 958966 and HQ 958056.

HOLDING:

NY H87189, dated February 25, 2002, is hereby revoked. The subject merchandise is classified in subheading 6406.10.6000, HTSUSA, which provides, for “Parts of footwear (including uppers whether or not attached to soles other than outer soles); re-

movable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Uppers and parts thereof, other than stiffeners: Other: Of rubber or plastics." The general column one duty rate is Free.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED MODIFICATION AND REVOCATIONS OF RULING
LETTERS AND REVOCATION OF TREATMENT RELATING TO
TARIFF CLASSIFICATION OF SWIMWEAR WITH FOAM IN-
SERTS

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

ACTION: Notice of proposed modification and revocations of tariff classification ruling letters and revocation of treatment relating to the classification of swimwear with foam inserts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) intends to modify one ruling and revoke three rulings relating to tariff classification of swimwear under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP also proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before August 18, 2003.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be reviewed 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: Kelly Herman, Textiles Branch: (202) 572-8713.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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 CBP 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 CBP 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.

In New York Ruling Letter (NY) NY I87533, dated November 5, 2002, NY J81177, dated February 24, 2003, NY H89257, dated April 9, 2002, and NY I80416, dated April 19, 2002, CBP classified swimwear with foam inserts in subheading 6307.90.9889, HTSUSA, as “other made-up articles”. These four rulings are set forth as attachments A through D to this document, respectively.

CBP has reviewed the classification of these articles and has determined that the cited rulings are in error. With respect to NY I87533 and NY I80416, we find that swimwear with removable inserts is properly classified in subheadings 6112.41.0020 and 6112.31.0020, HTSUSA, as “Track suits, ski-suits and swimwear, knitted or crocheted: Women’s or girls’ swimwear: Of synthetic fibers, Other: Girls” and “Track suits, ski-suits and swimwear, knitted or crocheted: Men’s or boys’ swimwear: Of synthetic fibers: Boys.” Proposed Headquarters Ruling Letters (HQ) 966391 modifying NY I87533 and HQ 966547 revoking NY I80416, are set forth as Attachments “E” and “F” to this document.

With respect to NY J81177 and NY H89257, we find that swimwear with sewn in foam inserts is properly classified in subheadings 6113.00.9086 and 6112.31.0010, HTSUSA, which provide for “Garments made up of knitted or crocheted fabrics of heading 5903, 5906 or 5907: Other, Other: Other: Women’s or girls” and for “Track suits, ski-suits and swimwear, knitted or crocheted: Men’s or boys’ swimwear: Of synthetic fibers, Men’s,” respectively. Proposed Headquarters Ruling Letters (HQ) 966549 revoking NY J81177 and HQ 966548 revoking NY H89257 are set forth as Attachments “G” and “H” to this document.

Although CBP refers in this notice to four New York Ruling Letters, this notice covers any rulings on substantially identical merchandise that may exist, but have not been specifically identified.

CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the four identified. No further rulings have been found. Any party who has received an interpretative ruling or decision (i.e., a ruling letter, an internal advice memorandum or decision, or a protest review decision) on the merchandise subject to this notice, which is contrary to this notice, should advise CBP during the comment period. An importer's failure to advise CBP of a specific interpretative ruling or decision addressing substantially identical merchandise not identified in this notice, may raise issues of reasonable care on the part of the importer or its agent for importation of merchandise subsequent to the effective date of the final decision on this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY I87533 and revoke NY J81177, NY H89257 and NY I80416, as well as any other ruling not specifically identified, to reflect the proper classification of swimwear with foam inserts. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

DATED: June 30, 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 I87533
November 5, 2002
CLA-2-63:RR:NC:TA:351 I87533
CATEGORY: Classification
TARIFF NO.: 6307.90.9889

Ms. DONNA L. SHIRA
SHARRETT, PALEY, CARTER & BLAUVELT, P.C.
Seventy-five Broad Street
New York, NY 10004

RE: The tariff classification of boys' and girls' float suits and a swim vest from China.

DEAR Ms. SHIRA:

In your letter dated October 22, 2002, on behalf of Authentic Fitness Corporation, you requested a tariff classification ruling. The samples are being returned as requested.

The samples submitted are a boys' float suit, style number 7530038, a girls' float suit, style number 7530040 and a swim vest, representing style numbers 757342, 757553, 757423, 7570051, and 7570052. The different style numbers for the swim vest represent different colors, patterns or different customers. The articles are used as a

swimming aid for children ages 2 to 4. The boys' and girls' float suits are one-piece suits made of 80 percent polyester/20 percent nylon stretch knit fabric. The upper torso's interior, back and front, is constructed with eight pockets with secured flaps. Contained in the pockets are removable foam inserts. Both float suits feature a partial zippered opening at the back. The enclosed paper label states: "This is not a life saving device."

The child sleeveless waist-length swim vest is constructed of 100 percent polyester stretch knit fabric designed for use by children ages 2 to 4. On the inside surface are eight pockets with secured flaps. Contained in the pockets are removable foam inserts. It features a front zipper closure. The enclosed cardboard label states: "This is not a life saving device."

The applicable subheading for the float suits and swim vest will be 6307.90.9889, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles * * * Other. The rate of duty will be 7 percent *ad valorem*.

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

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

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY J81177
February 24, 2003
CLA-2-63:RR:NC:TA:351 J81177
CATEGORY: Classification
TARIFF NO.: 6307.90.9889

Ms. LYNN B. STAN
EMSA
2185 City Gate Dr.
Columbus, OH 43219

RE: The tariff classification of a "Youth Neoprene Flotation Suit" from Thailand.

DEAR Ms. STAN:

In your letter dated February 11, 2003, on behalf of Kent Sporting Goods Company, Inc., you requested a tariff classification ruling.

The sample submitted is a "Youth Neoprene Flotation Suit." It is a one-piece sleeveless bodysuit-style item made of neoprene rubber covered on both sides with knit fabric. It has leg openings but no leg coverage. Sewn into the upper torso area, front and back, is a PVC foam panel. It features a front zipper closure. It appears to be designed to assist a child while swimming.

You state your belief that the correct classification for this item is subheading 6307.20.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles, lifejackets and lifebelts. The U.S. Coast Guard standard for life preservers (46 CFR 160.055) states the following:

This specification covers life preservers which essentially consist of plastic foam buoyant material arranged and distributed so as to provide the flotation characteristics and buoyancy required to hold the wearer in an upright or slightly backward position with head and face clear of the water.

The Youth Neoprene Floatation Suit is described in your letter as a floatation swim vest, which we take to mean a floatation aid, a device to assist children learning to swim. While it provides buoyancy, its main function is not that of a life jacket, that is, to save a life, but rather to allow a child to play and swim.

The applicable subheading for the "Youth Neoprene Flotation Suit" will be 6307.90.9889, HTS, which provides for other made up articles * * * Other. The rate of duty will be 7 percent *ad valorem*.

Articles classifiable under subheading 6307.90.9889, HTS, which are products of Thailand, are currently entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP, however, is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check the Customs Web site at www.customs.gov. At the Web site, click on "CEBB" and then search for the term "GSP".

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

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

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION.
NY H89257
April 9, 2002
CLA-2-63:RR:NC:N3:351 H89257
CATEGORY: Classification
TARIFF NO.: 6307.90.9889

MR. CARLOS CARRANCO
CARRANCO & POU, LLC
21424 SW 87 Place
Miami, FL 33189

RE: The tariff classification of floatation pants from China, Korea, Mexico, or China.

DEAR MR. CARRANCO:

In your letter dated March 14, 2002, you requested a ruling on tariff classification.

You submitted a sample of the Dr. Gravity.net. It has the appearance of a pair of shorts or bathing trunks, with an elasticized waist and drawstring. However there are 12 foam pads sewn into the shorts. Your letter states that the shorts are made to be worn over a regular swim suit since it has no interior mesh liner. The bulky padding make it impractical to be worn other than for swimming. You state that the purpose is to allow a swimmer to gain confidence while learning to swim.

In your letter you suggest that the correct classification is subheading 6211.33.0061, Harmonized Tariff Schedule of the United States (HTS), which provides for track suits, ski-suits and swimwear; other garments: men's or boys': other. However, items are not considered wearing apparel when the use of those items goes far beyond that of general wearing apparel. While there are similarities between the Dr. Gravity and a pair of shorts or a standard men's swimsuit, it is exclusively used in very specific situations. The difference in use and effect between this article and conventional shorts or swimsuits is so large that we must conclude that the Dr. Gravity.net is no longer wearing apparel.

The applicable subheading for this product will be 6307.90.9889, HTS, which provides for other made up textile articles: other. The general rate of duty will be seven percent *ad valorem*.

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

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

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY I80416
April 19, 2002
CLA-2-63:RR:NC:TA:351 I80416
CATEGORY: Classification
TARIFF NO.: 6307.90.9989

Ms. CHERYL SANTOS
CVS/PHARMACY
One CVS Drive
Woonsocket, RI 02895

RE:

The tariff classification of a "Swim Training Suit" from China,

DEAR Ms. SANTOS:

In your letter dated April 9, 2002, you requested a tariff classification ruling. The sample is being returned as requested.

The sample submitted is a "Swim Training Suit," item number 181977 used as a swimming aid for children ages 3 to 6. It is a one-piece unisex suit. It is made of stretch knit polyester fabric designed with flotation foam sewn into the back, front and neck area. The "Swim Training Suit" is described in the literature as an aid for pre-swimmers, a device to assist children learning to swim. While it provides buoyancy, its main function is not that of a life jacket, that is, to save a life, but rather to allow a child to play and swim. In addition, the garment has a label which states "Not a Life Preserver."

The applicable subheading for the "Swim Training Suit" will be 6307.90.9889, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up articles * * * Other. The rate of duty will be 7 percent *ad valorem*.

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

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

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

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966391
CLA-2 RR:CR:TE 966391 KSH
TARIFF NO.: 6112.41.0020, 6112.31.0020

DONNA L. SHIRA, ESQ.
SHARRETS, PALEY, CARTER & BLAUVELT, P.C.
Seventy-five Broad Street
New York, NY 10004

RE: Modification of New York Ruling Letter (NY) I87533, dated November 5, 2002;
Classification of girls' and boys' Float Suits

DEAR Ms. SHIRA:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I87533, issued to you on November 5, 2002, on behalf of your client Authentic Fitness Corporation, concerning, in part, the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of two articles worn by boys and girls and identified as a float suit.¹ The articles were classified in subheading 6307.90.9889, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other." We have reviewed that ruling and, with respect to the float suits, found it to be in error. Therefore, this ruling modifies NY I87533 as it pertains to the classification of the float suits.

FACTS:

The merchandise at issue consists of a boys' float suit, style number 7530038 and a girls' float suit, style number 7530040. The boys' and girls' float suits are one piece full body suits made of 80 percent polyester/20 percent nylon stretch knit fabric. The upper torso's interior, back, and front is constructed with eight pockets with secured flaps. Removable foam inserts are contained in the pockets. With these in place, the articles are used as a swimming aid for children ages 2-4. The articles feature a partial zippered opening at the back. The enclosed paper label states: "This is not a life saving device."

ISSUE:

Are the textile articles at issue classifiable as swimsuits or as other made up articles.

LAW AND ANALYSIS:

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

Chapter 61 covers certain articles of apparel that are knitted or crocheted. Heading 6112, HTSUSA, provides for track suits, ski-suits and swimwear, knitted or crocheted. In order for the article to be classified in Chapter 61, HTSUSA, the article must be considered wearing apparel. Heading 6307, HTSUSA, provides for other made up textile articles not more specifically provided for elsewhere in the tariff schedule. To be classified under Heading 6307, HTSUSA, the article must be considered "of textiles",

¹ NY I87533 also classified a swim vest. That classification is not in issue for purposes of this modification.

“made up”, within the meaning of Note 7, Section XI, and must not be more specifically classifiable as a garment of Chapter 61.

It is your position that, “the instant float suits cannot be classified as garments because their primary use is as flotation devices and they cannot be used in the same manner as traditional swimsuits.” You argue that the float suits’ inserts are not intended to be removed other than for cleaning or replacement and to do otherwise would cause the articles to be unusable due to gaping and general discomfort.

In *Arnold v. United States*, 147 U.S. 494, 496 (1892), the Supreme Court defined “wearing apparel” as “not an uncommon one in statutes, and * * * used in an inclusive sense as embracing all articles which are ordinarily worn—dress in general.” In *Antonia Pompeo v. United States*, 40 Cust. Ct. 362, 365, C.D. 2006 (1958), it was held that the term wearing apparel includes articles worn by human beings for reasons of decency, comfort or adornment, but does not include articles worn as a protection against the hazards of a game, sport or occupation. And, in *Jack Bryan, Inc. v. United States*, 72 Cust. Ct. 197, 204, C.D. 4541 (1974) the Court stated that the term wearing apparel is generic or descriptive and that under prior tariff acts it was held to mean all articles of wearing apparel worn by human beings for reasons of decency, comfort and adornment.

However, whether an article is to be considered wearing apparel depends on its use. See *Admiral Craft Equipment Corp. v. United States*, 82 Cust. Ct. 162, 164, C.D. 4796 (1979). In *Daw Industries, Inc. v. United States*, 1 Fed. Cir. 146, 150 (1983), the Court of Appeals for the Federal Circuit further elaborated that virtually all wearing apparel is to a degree (often a high degree) designed and worn to provide comfort and protection, often for very specific situations. The pivotal issue is whether the incremental difference in the article to be used in a specific situation has become so large that the article is no longer wearing apparel.

The packaging for the float suit states that it is a great tool for helping teach young swimmers, allows children to move their arms and legs freely, builds water confidence and provides UV protection. The float suits provide protection from the elements, protect the decency of the wearer and may even be said to adorn the body. While the float suits may provide some buoyancy and be used as a swimming aid the additional protection and other features of the float suit are not significantly more or essentially different than a swimsuit alone. Thus, we conclude that the float suits are wearing apparel.

HOLDING:

NY I87533, dated November 5, 2002, is hereby modified.

The float suits are properly classified in subheading 6112.41.0020 and 6112.31.0020, HTSUSA, which provide, respectively, for “Track suits, ski-suits and swimwear, knitted or crocheted: Women’s or girls’ swimwear: Of synthetic fibers, Other: Girls” and “Track suits, ski-suits and swimwear, knitted or crocheted: Men’s or boys’ swimwear: Of synthetic fibers: Boys.” The general column one duty rates are 25.1 percent and 26.1 percent, *ad valorem*, respectively. The textile 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 bi-lateral 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*, an issuance of CBP which is available on the CBP website at www.CBP.gov.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966547
CLA-2 RR:CR:TE 966547 KSH
TARIFF NO.: 6112.41.0020

Ms. CHERYL SANTOS
CVS/PHARMACY
One CVS Drive
Woonsocket, RI 02895

RE: Revocation of New York Ruling Letter (NY) I80416, dated April 19, 2002; Classification of children's swim training suit.

DEAR Ms. SANTOS:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I80416, issued to you on April 19, 2002, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a "Swim Training Suit," item number 181977. The article was classified in subheading 6307.90.9889, HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY I80416.

FACTS:

The Swim Training Suit is described as a one-piece unisex suit style made of stretch knit polyester fabric with flotation foam sewn into the back, front, and neck area. It is said to be designed as a swimming aid for children ages 3-6.

ISSUE:

Whether the Swim Training Suit is classifiable as a swimsuit or as an other made up article.

LAW AND ANALYSIS:

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

Chapter 61 covers certain articles of apparel that are knitted or crocheted. Heading 6113, HTSUSA, provides for garments, made up of knitted or crocheted fabrics of heading 5903, 5906, or 5907. In order for the article to be classified in Chapter 61, HTSUSA, the article must be considered wearing apparel. Heading 6307, HTSUSA, provides for other made up textile articles not more specifically provided for elsewhere in the tariff schedule. To be classified under Heading 6307, HTSUSA, the article must be considered "of textiles", "made up", within the meaning of Note 7, Section XI, and must not be more specifically classifiable as a garment of Chapter 61.

In *Arnold v. United States*, 147 U.S. 494, 496 (1892), the Supreme Court defined "wearing apparel" as "not an uncommon one in statutes, and * * * used in an inclusive sense as embracing all articles which are ordinarily worn—dress in general." In *Antonia Pompeo v. United States*, 40 Cust. Ct. 362, 365, C.D. 2006 (1958), it was held that the term wearing apparel includes articles worn by human beings for reasons of decency, comfort or adornment, but does not include articles worn as a protection against the hazards of a game, sport or occupation. In *Jack Bryan, Inc. v. United States*, 72 Cust. Ct. 197, 204, C.D. 4541 (1974), the Court stated that the term wearing apparel is generic or descriptive and that under prior tariff acts it was held to

mean all articles of wearing apparel worn by human beings for reasons of decency, comfort and adornment.

However, whether an article is to be considered wearing apparel depends on its use. See *Admiral Craft Equipment Corp. v. United States*, 82 Cust. Ct. 162, 164, C.D. 4796 (1979). In *Daw Industries, Inc. v. United States*, 1 Fed. Cir. 146, 150 (1983), the Court of Appeals for the Federal Circuit further elaborated that virtually all wearing apparel is to a degree (often a high degree) designed and worn to provide comfort and protection, often for very specific situations. The pivotal issue is whether the incremental difference in the article to be used in a specific situation has become so large that the article is no longer wearing apparel.

The swim training suit allows children to move their arms and legs freely and builds water confidence while the child plays and swims. While the suit provides some buoyancy to aid swimming, the additional protection and other features of the suit are not significantly more or essentially different than a swimsuit alone. Thus, we conclude that the swim training suit is wearing apparel.

HOLDING:

NY 180416, dated April 19, 2002, is hereby revoked.

The swim training suit is properly classified in subheading 6112.41.0020, HTSUSA, which provides for "Track suits, ski-suits and swimwear, knitted or crocheted: Women's or girls' swimwear: Of synthetic fibers, Other: Girls'." The general column one duty rate is 25.1 percent, *ad valorem*. The textile 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 bi-lateral 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*, an issuance of CBP which is available on the CBP website at www.CBP.gov.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966549
CLA-2 RR:CR:TE 966549 KSH
TARIFF NO.: 6113.00.9086

Ms. LYNN B. STAN
EMSA
2185 City Gate Dr.
Columbus, Ohio 43219

RE: Revocation of New York Ruling Letter (NY) J81177, dated February 24, 2003;
Classification of Youth Neoprene Floatation Suit

DEAR Ms. STAN:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) J81177, issued to you on February 24, 2003, on behalf of your client Kent Sporting Goods Company, Inc., concerning the classification under the Harmonized Tariff Schedule of the United States Anno-

tated (HTSUSA) of a "Youth Neoprene Flotation Suit." The article was classified in subheading 6307.90.9889, HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY J81177.

FACTS:

The Youth Neoprene Flotation Suit is described as a one-piece sleeveless body-suit style made of neoprene rubber covered on both sides with knit fabric. It has leg openings but no leg coverage. A PVC foam panel is sewn into the upper torso area, front and back. The suit features a front zipper closure and appears to be designed to provide buoyancy and assist a child while swimming.

ISSUE:

Whether the Youth Neoprene Flotation Suit is classifiable as a swimsuit or as an other made up article.

LAW AND ANALYSIS:

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

Chapter 61 covers certain articles of apparel that are knitted or crocheted. Heading 6113, HTSUSA, provides for garments, made up of knitted or crocheted fabrics of heading 5903, 5906, or 5907. In order for the article to be classified in Chapter 61, HTSUSA, the article must be considered wearing apparel. Heading 6307, HTSUSA, provides for other made up textile articles not more specifically provided for elsewhere in the tariff schedule. To be classified under Heading 6307, HTSUSA, the article must be considered "of textiles", "made up", within the meaning of Note 7, Section XI, and must not be more specifically classifiable as a garment of Chapter 61.

In *Arnold v. United States*, 147 U.S. 494, 496 (1892), the Supreme Court defined "wearing apparel" as "not an uncommon one in statutes, and * * * used in an inclusive sense as embracing all articles which are ordinarily worn—dress in general." In *Antonia Pompeo v. United States*, 40 Cust. Ct. 362, 365, C.D. 2006 (1958), it was held that the term wearing apparel includes articles worn by human beings for reasons of decency, comfort or adornment, but does not include articles worn as a protection against the hazards of a game, sport or occupation. In *Jack Bryan, Inc. v. United States*, 72 Cust. Ct. 197, 204, C.D. 4541 (1974), the Court stated that the term wearing apparel is generic or descriptive and that under prior tariff acts it was held to mean all articles of wearing apparel worn by human beings for reasons of decency, comfort and adornment.

However, whether an article is to be considered wearing apparel depends on its use. See *Admiral Craft Equipment Corp. v. United States*, 82 Cust. Ct. 162, 164, C.D. 4796 (1979). In *Daw Industries, Inc. v. United States*, 1 Fed. Cir. 146, 150 (1983), the Court of Appeals for the Federal Circuit further elaborated that virtually all wearing apparel is to a degree (often a high degree) designed and worn to provide comfort and protection, often for very specific situations. The pivotal issue is whether the incremental difference in the article to be used in a specific situation has become so large that the article is no longer wearing apparel.

The flotation suit allows children to move their arms and legs freely and builds water confidence while they play and swim. While the flotation suit provides some buoyancy to aid in swimming, the additional protection and other features of the flotation suit are not significantly more or essentially different than a swimsuit alone. Thus, we conclude that the flotation suit is wearing apparel.

HOLDING:

NY J81177, dated February 24, 2003, is hereby revoked.

The "youth neoprene flotation suit" is properly classified in subheading 6113.00.9086, HTSUSA, the provision for "Garments, made up of knitted or crocheted fabrics of heading 5903, 5906, or 5907: Other: Other: Other: Women's or girls'." The general column one duty rate is 7.2 percent, *ad valorem*. The designated textile category code 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 bi-lateral 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*, an issuance of CBP which is available on the CBP website at www.CBP.gov.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966548
CLA-2 RR:CR:TE 966548 KSH
TARIFF NO.: 6112.31.0010

MR. CARLOS CARRANCO
CARRANCO & POU, LLC
21424 SW 87 Place
Miami, FL 33189

RE: Revocation of New York Ruling Letter (NY) H89257, dated April 9, 2002; Classification of men's bathing trunks.

DEAR MR. CARRANCO:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) H89257, issued to you on April 9, 2002, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of the "Dr. Gravity.net" bathing trunks. The article was classified in subheading 6307.90.9889, HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other, Other: Other." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY H89257.

FACTS:

The garment at issue is described as a pair of shorts or bathing trunks, with an elasticized waist and drawstring with 12 foam pads sewn into the shorts. The shorts are designed to be worn over a regular swim suit for the user to gain confidence while learning to swim.

ISSUE:

Whether the article is classifiable as a swimsuit or as an other made up article.

LAW AND ANALYSIS:

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

Chapter 61 covers certain articles of apparel that are knitted or crocheted. Heading 6112, HTSUSA, provides for track suits, ski-suits and swimwear, knitted or crocheted garments, made up of knitted or crocheted fabrics of heading 5903, 5906, or 5907. In order for the article to be classified in Chapter 61, HTSUSA, the article must be considered wearing apparel. Heading 6307, HTSUSA, provides for other made up textile articles not more specifically provided for elsewhere in the tariff schedule. To be classified under Heading 6307, HTSUSA, the article must be considered "of textiles", "made up", within the meaning of Note 7, Section XI, and must not be more specifically classifiable as a garment of Chapter 61.

In *Arnold v. United States*, 147 U.S. 494, 496 (1892), the Supreme Court defined "wearing apparel" as "not an uncommon one in statutes, and * * * used in an inclusive sense as embracing all articles which are ordinarily worn—dress in general." In *Antonia Pompeo v. United States*, 40 Cust. Ct. 362, 365, C.D. 2006 (1958), it was held that the term wearing apparel includes articles worn by human beings for reasons of decency, comfort or adornment, but does not include articles worn as a protection against the hazards of a game, sport or occupation. In *Jack Bryan, Inc. v. United States*, 72 Cust. Ct. 197, 204, C.D. 4541 (1974), the Court stated that the term wearing apparel is generic or descriptive and that under prior tariff acts it was held to mean all articles of wearing apparel worn by human beings for reasons of decency, comfort and adornment.

However, whether an article is to be considered wearing apparel depends on its use. See *Admiral Craft Equipment Corp. v. United States*, 82 Cust. Ct. 162, 164, C.D. 4796 (1979). In *Daw Industries, Inc. v. United States*, 1 Fed. Cir. 146, 150 (1983), the Court of Appeals for the Federal Circuit further elaborated that virtually all wearing apparel is to a degree (often a high degree) designed and worn to provide comfort and protection, often for very specific situations. The pivotal issue is whether the incremental difference in the article to be used in a specific situation has become so large that the article is no longer wearing apparel.

The item allows the user to build confidence as he learns to swim. While the item provides some buoyancy to aid in swimming, the additional protection and other features of the trunks are not significantly more or essentially different than a swimsuit alone. Thus, we conclude that the item is wearing apparel.

HOLDING:

NY H89257, dated April 9, 2003, is hereby revoked.

The item at issue, identified as the "Dr. Gravity.net" bathing trunks, are properly classified in subheading 6112.31.0010, HTSUSA, as "Track suits, ski-suits and swimwear, knitted or crocheted: Men's or boys' swimwear: Of synthetic fibers, Men's." The general column one duty rate is 26.1 percent, *ad valorem*. The textile 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 bi-lateral 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*, an issuance of CBP which is available on the CBP website at www.CBP.gov.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

