

General Notices

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

Washington, DC, September 16, 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.*

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF VIBRATORY PLATES AND RAMMERS

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

ACTION: Notice of modification of tariff classification ruling letter and revocation of any treatment relating to the classification of vibratory plates and rammers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (Customs) is modifying one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of vibratory plates and rammers. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published in the Customs Bulletin on August 6, 2003. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after (60 days from the date of publication of notice in the Customs Bulletin).

FOR FURTHER INFORMATION CONTACT: David Salkeld, General Classification Branch, at (202) 572-8781.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the Customs Bulletin on August 6, 2003, proposing to modify New York Ruling Letter (NY) 842039, dated June 15, 1989, which involved the classification, in pertinent part, of vibratory plates and rammers. No comments were received in response to the notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in

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

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY 842039 and is revoking 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 Headquarters Ruling Letter (HQ) 966580 (Attachment A). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs revokes any treatment previously accorded by Customs 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: September 11, 2003

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

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966580
September 11, 2003
CLA-2 RR:CR:GC 966580 DSS
CATEGORY: Classification
TARIFF NO.: 8429.40.00

MR. TED ADAIR
BARTELL INDUSTRIES, INC.
31 Sun Pac Blvd.
Brampton, Ontario, Canada L65 5P6

RE: Modification of NY 842039; vibratory plates and rammers

DEAR MR. ADAIR:

This letter is pursuant to U.S. Customs and Border Protection (Customs) reconsideration of New York ruling letter (NY) 842039, dated June 15, 1989, which was issued to you by the Director, National Commodity Specialist Division, New York, with respect to the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of several articles, including vibratory plates and rammers. After review of NY 842039, Customs has determined that the classification of vibratory plates and rammers under sub-heading 8467.89.50, HTSUS, was incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modification) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107

Stat. 2057, 2186 (1993), a notice was published on August 6, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 32, proposing to modify NY 842039. No comments were received in response to this notice.

FACTS:

In NY 842039, Customs classified power trowels, vibratory plates and rammers. The vibratory plates and rammers are self-propelled, gasoline-powered machines designed for compressing earth, clay or gravel prior to the installation of concrete. In NY 842039, Customs classified the subject vibratory plates and rammers under subheading 8467.89.50, HTSUS, which provides for "Tools for working in the hand, pneumatic, hydraulic or with self-contained electric or nonelectric motor, and parts thereof: Other tools: Other: Other."

ISSUE:

What is the proper tariff classification for self-propelled vibratory plates and rammers?

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

| | |
|------------|---|
| 8429 | Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers: |
| 8429.40.00 | Tamping machines and road rollers * * * * |
| 8430 | Other moving, grading, leveling, scraping, excavating, tamping, compacting, extracting or boring machinery, for earth, minerals or ores; pile-drivers and pile-extractors; snowplows and snowblowers: Other machinery, not self-propelled: |
| 8430.61.00 | Tamping or compacting machinery * * * * |

8467 Tools for working in the hand, pneumatic, hydraulic or with self-contained electric or nonelectric motor, and parts thereof:

Other tools:

8467.89 Other:

8467.89.50 Other:

Relevant ENs indicate that the machines of heading 8429, HTSUS, include self-propelled tamping machines which are used in road building. EN 84.29 states that:

The heading covers a number of earth digging, excavating or compacting machines which are explicitly cited in the heading and which have in common the fact that they are all self-propelled.

The provisions of Explanatory Note to heading 84.30 relating to self-propelled and multi-function machines apply, *mutandis mutatis*, to the self-propelled machinery of this heading, which includes the following:

* * * (H) **Tamping machines** as used in road making, for packing railroad ballast, etc. . . .

EN 84.30 states that heading 8430, HTSUS, classifies tamping machines that are not self-propelled. However, the instant vibratory plates and rammers are self-propelled tamping machines and are specifically classified under heading 8429, HTSUS. See HQ 089015, dated July 26, 1991.

According to GRI 3(a), the merchandise in question must be classified pursuant to the heading providing the most specific description. See *Better Home Plastics Corp v. United States*, 20 C.I.T. 221, 222; 916 F. Supp. 1265, 1266 (1996). Moreover, EN 3(a)(IV)(a) states in pertinent part that "a description by name is more descriptive than a description by class." Indeed, the Court of Appeals for the Federal Circuit states that under the rule of specificity, "the court w[ill] look to the provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty." See *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, 1380 (Fed. Cir. 1999) (citing *Orlando Food Corp. v. United States*, 140 F.3d 1437, 1441 (Fed. Cir. 1998)). The term "self-propelled tamping machines" would appear to be more descriptive of the machines under consideration than the term "machines for working in the hand" because the former term is more restrictive and has terms that are more difficult to satisfy.

The ENs to heading 8467 provide, in pertinent part, that:

The heading covers such tools only if for working in the hand. The expression "tools for working in the hand" means tools designed to be held in the hand during use, and also heavier tools (such as earth rammers) which are portable, that is, which can be lifted and moved by hand by the user, in particular while work is in progress, and which are also designed to be controlled and directed by hand during operation. To obviate the fatigue of taking their full weight during operation they may be used with auxiliary supporting devices (e.g., tripods, jacklegs, overhead lifting tackle). . . .

The instant machines should be classified under subheading 8429.40.00, HTSUS, as self-propelled tamping machines, according to GRI 3(a). In this case, subheading 8429.40.00, HTSUS, is the provision with the requirements that are more difficult to satisfy and that describes the instant vibratory plates and rammers with the greater degree of accuracy and certainty. Heading 8467, HTSUS, tools for working in the hand, covers a wide range of tools for working in the hand. Heading 8429, HTSUS, on the other hand covers a narrower range of earth digging, excavating or compacting machines that are explicitly cited in the heading text. Most importantly, the machines must be self-propelled. We believe that self-propelled earth compacting rammers are more accurately and specifically described by subheading 8429.40.00, HTSUS.

HOLDING:

In accordance with the above discussion, the correct classification for self-propelled vibratory plates and rammers is subheading 8429.40.00, HTSUS, which provides for "Self-propelled bulldozers, angledozers, graders, levelers, scrapers, mechanical shovels, excavators, shovel loaders, tamping machines and road rollers: Tamping machines and road rollers."

EFFECT ON OTHER RULINGS:

NY 842039 is MODIFIED with respect to the vibratory plate and rammer. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

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

19 CFR PART 177

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF PAINT ROLLER FRAMES

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

ACTION: Notice of revocation of a ruling letter and treatment relating to tariff classification of paint roller frames.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of paint roller frames and revoking any treatment previously accorded by Customs to substantially identical transactions. One comment was received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 30, 2003.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, General Classification Branch, (202) 572-8782.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on July 9, 2003, in the *Customs Bulletin*, Vol. 37, No. 28, proposing to revoke NY PD C87444 dated May 29, 1998, pertaining to the tariff classification of paint roller frames. One comment was received in response to this 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 Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to

importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to have advised Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of this final notice.

In PD C87444, dated May 29, 1998, Customs found that paint roller frames were classified in subheading 8205.59.55, HTSUS, as iron or steel hand tools not elsewhere specified or included.

Customs has reviewed the matter and determined that the correct classification of paint roller frames is in subheading 7326.20.00, HTSUS, which provides for articles of iron or steel wire.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking PD C87444, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 966118, as set forth in the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

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

Dated: September 11, 2003

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966118
September 11, 2003
CLA-2 RR:CR:GC 966118 KBR
CATEGORY: Classification
TARIFF NO.: 7326.20.00

Mr. TOM PACIAFFI
VICE PRESIDENT, CORONET BROKERS CORPORATION
JFK International Airport, Cargo Building 80
Jamaica, NY 11430-0764

RE: Reconsideration of PD C87444; Steel Paint Roller Frame

DEAR MR. PACIAFFI:

This is in reference to a classification ruling issued to you on behalf of Zomax Industries by the Port Director, U.S. Customs Service, Houston, PD

C87444, on May 29, 1998. That ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a steel paint roller frame. We have reviewed PD C87444 and determined that the classification is incorrect.

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), a notice was published on July 9, 2003, Vol. 37, No. 28 of the *Customs Bulletin*, proposing to revoke PD C87444. One comment was received in response to this notice. That comment is discussed in the LAW AND ANALYSIS section of this ruling.

FACTS:

PD C87444 concerned Zomax item number 5794, a 3 inch steel paint roller frame with a plastic handle. Its shank is constructed from heavy duty, quarter-inch wire. The hollow end of the plastic handle is threading to facilitate the use of an extension pole.

In PD C87444, Customs determined that the steel paint roller frame was classified in subheading 8205.59.55, HTSUS, as other iron or steel handtools not elsewhere specified or included. We have reviewed that ruling and determined that the classification is incorrect. This ruling sets forth the correct classification.

ISSUE:

Is a steel paint roller frame properly classified under the HTSUS as a handtool or as an article of iron or steel?

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). Under GRI 1, merchandise is classifiable 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 on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

| | |
|------------|----------------------------------|
| 7326 | Other articles of iron or steel: |
| 7326.20.00 | Articles of iron or steel wire |
| 7326.90 | Other: |
| | Other: |
| | Other: |
| 7326.90.85 | Other |

8205 Handtools (including glass cutters) not elsewhere specified or included; blow torches and similar self-contained torches; vises, clamps and the like, other than accessories for and parts of machine tools; anvils; portable forges; hand- or pedal-operated grinding wheels with frameworks; base metal parts thereof:

Other handtools (including glass cutters) and parts thereof:

8205.59 Other:

Other:

Other:

Of iron or steel:

8205.59.55 Other:

8466 Parts and accessories suitable for use solely or principally with the machines of headings 8456 to 8465, including work or tool holders, self-opening dieheads, dividing heads and other special attachments for machine tools; tool holders for any type of tool for working in the hand:

8466.10 Tool holders and self-opening dieheads:

8466.10.80 Other

The article at issue is a 3 inch paint roller frame made from ¼ inch wire with a plastic handle. To be used, a consumer must purchase separately a paint roller cover. Once the cover is slipped over the wire end of the paint roller frame, it is dipped into paint (or similar substance) and rolled onto the surface to be treated. It is the cover that applies the paint to the surface.

One comment was received in response to the notice. The commenter disagrees with the proposed classification of the paint roller frame, stating that paint roller frames are specifically provided for in subheading 7326.90.8575, HTSUS. We first note that this office typically classifies only to the eight-digit level. Classifications to the ten-digit level are for statistical purposes only and the last two digits do not determine the actual classification. Pub. L. 100-48, Title I, § 1204(a), August 23, 1988, 102 Stat. 1148. Second, pursuant to GRI 1, classification is determined according to the terms of the headings (four-digit level) and any relative section or chapter notes. In the instant case, Customs must determine the correct four, six and eight-digit classification, in that order; we cannot look first to the ten-digit classification, ignoring whether the article satisfies the prior classification steps.

Hand tools, included in heading 8205, HTSUS, are not defined in the HTSUS or ENs. Courts have defined hand tool as "any tool which is held and operated by the unaided hands; e.g., a chisel, plane or saw." *Western Oilfields Supply Co. v. United States*, 296 F. Supp. 330, 62 Cust. Ct. 182 (1969); *Hollywood Accessories, Division of Allen Electronics & Equipment Co. v. United States*, 282 F. Supp. 499, 60 Cust. Ct. 360 (1968); *F.B. Vandegrift & Co., Inc. v. United States*, 65 Cust. Ct. 260 (1970).

The Chapter Notes for Chapter 82 state that, with certain exceptions, “this chapter covers only articles with a blade, working edge, working surface or other working part of: (a) Base metal. . . .” The court in *Continental Arms Corp.; Gehrig, Hoban & Co., Inc. v. United States*, 65 Cust. Ct. 80, 82 (1970), defined “working part” as:

. . . “working part” of a hand tool is that part which performs work on an external object. . . .

Some light is shed on the meaning of “working part” by the associated words, “blade, working edge, working surface,” all of which perform work in relation to a workpiece.

Additionally, we have considered the various tools provided for *eo nomine* in [the subpart], particularly the following hand tools . . . : Hammers, sledges, crowbars, track tools, wedges, drilling tools, threading tools, tapping tools, chisels, gimlets, gouges, planes, pencil sharpeners, lead and crayon pointers, and screwdrivers. The foregoing tools all do some form of work vis-à-vis an object external to the tool. . . .

We therefore think that Congress used the term “working part” in the sense urged by defendant, viz., that part of the tool which does work in relation to a workpiece or object external to the tool.

In the instant case, the paint roller frame is not the “working part” as defined above. The textile paint roller cover is the component that actually deposits the paint onto the surface. EN 82.05 provides: “Tools containing metal but with working parts of rubber, leather, felt, etc. are classified according to the constituent materials. . . .” Since the “working part” is textile and not base metal, this would remove the article from chapter 82, and pursuant to the ENs, it would be classified according to the component part, in this case steel wire.

Under the Tariff Schedules of the United States (TSUS), the predecessor of the HTSUS, Customs ruled that paint roller frames were classified as articles of iron or steel. HQ 074347 (September 28, 1984). This ruling found that the textile roller cover is the “part which imparts the paint roller with its most important characteristic, the ability to deposit paint onto a wall.” The textile roller cover “is the most significant in the overall functioning of the item and therefore is strong support for the notion that the roller frame is merely a part and not a substantially complete paint roller.” Customs has held that when the handle and cover are imported together, they are considered a “paint roller” and are specifically provided for in subheading 9603.40.20, HTSUS. NY J80036 (January 21, 2003), (stating that NY I82307 (November 29, 2002) included both the handle and cover although the case only described the cover). *See also* NY I80287 (April 8, 2002). NY J80036 held that when the handle and roller cover are imported separately, neither piece contained the essential character of the complete article. Therefore, the paint roller covers when imported separately were classifiable as textile articles in subheading 6307.90.98, HTSUS; and the handle when imported separately was classified as articles of iron or steel wire in subheading 7326.20.00, HTSUS.

Based on the above analysis, we find that the paint roller frame is not a “working part” of a hand tool and should be classified according to its component parts, steel wire. Therefore, we find that the paint roller frame is clas-

sified under subheading 7326.20.00, HTSUS, as an article of iron or steel wire.

HOLDING:

The paint roller frame is classified under subheading 7326.20.00, HTSUS, as an article of iron or steel wire.

EFFECT ON OTHER RULINGS:

PD C87444 dated May 29, 1998, is revoked.

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

19 CFR PART 177

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of titanium billets, and to revoke any treatment Customs has previously accorded to substantially identical transactions. These billets are forged from ingots that were produced in a vacuum arc furnace from melted titanium. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before October 31, 2003.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. 20220, 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: James A. Seal,
Commercial Rulings Division (202) 572-8779.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to 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 Customs intends to revoke a ruling relating to the tariff classification of titanium billets. Although in this notice Customs is specifically referring to one ruling, NY A84786, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise Customs 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 Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise

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

In NY A84786, dated July 12, 1996, titanium billets were held to be classifiable as unwrought titanium, in subheading 8108.10.50, HTSUS. The ruling requester identified the product as a billet, provided its chemical breakdown and intended end use, but did not state how the article was produced. The ruling was based on the description, "billet," but failed to note that titanium billets are normally produced by hot rolling or forging. Rolled and forged products are not within the term "unwrought," as defined in Additional U.S. Note 1, HTSUS. NY A84786 is set forth as "Attachment A" to this document.

It is now Customs position that these titanium billets are classifiable in subheading 8108.90.60, HTSUS, as titanium and articles thereof, other. Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY A84786 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in HQ 966570, which is set forth as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: September 11, 2003

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY A84786
July 12, 1996
CLA-2-81:S:N1:118 A84786
CATEGORY: Classification
TARIFF NO.: 8108.10.5045

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

RE: The tariff classification of titanium billet from Russia.

DEAR MR. ABERLY:

This is in response to your request for a tariff classification ruling dated June 5, 1996.

You have described the material to be imported as titanium which is composed of 90 percent titanium by weight, 6 percent Aluminum, and 4 percent vanadium. You state that the material is imported in billet form and will be melted down and used to manufacture recreational equipment.

The provision applicable to this product will be subheading 8108.10.5045 Harmonized Tariff Schedule of the United States (HTS), which provides for Unwrought titanium: Billet. The rate of duty is 15 percent ad valorem.

If you require a scope determination ruling on the applicability of anti-dumping duty to your product, please write directly to:

Director, Office of Anti-Dumping Compliance International Trade Administration
United States Department of Commerce Washington, D.C. 20230

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 the office of National Import Specialist 118 at 212-466-5492.

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

[ATTACHMENT B]

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

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

RE: NY A84786 Revoked; Forged Titanium Billets

DEAR MR. ABERLY:

In NY A84786, which the Director of Customs National Commodity Specialist Division, New York, issued to you on July 12, 1996, certain titanium billets from Russia were held to be classifiable as unwrought titanium, in subheading 8108.10.50, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered this classification and now believe that it is incorrect.

FACTS:

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

The HTSUS provisions under consideration are as follows:

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

ISSUE:

Whether forged titanium billets are unwrought products for tariff purposes.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

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

HOLDING:

Under the authority of GRI 1, the titanium billets are provided for in heading 8108. They are classifiable as other titanium and articles thereof, in subheading 8108.90.60, HTSUS. NY A84786 is revoked.

Articles from Russia, classifiable in subheading 8108.90.60, HTSUS, may be eligible for duty-free treatment under the Generalized System of Preferences (GSP), upon compliance with applicable law and Customs Regulations in Title 19, Code of Federal Regulations, Sections 10.171 through and including 10.178a. However, as GSP status is periodically subject to review, we urge you to determine the current eligibility under GSP of this product from Russia by writing to The United States Trade Representative at 600 17th St., N.W., Washington, D.C. 20508, or by calling that office at 1 (888) 473-USTR. You may also choose to e-mail the USTR at contactustr@ustr.gov. Your message will be routed to the appropriate office.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

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

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke one ruling letter relating to the tariff classification of lower body dignity garments under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP 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 October 31, 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 Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of lower body dignity garments. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) I88517, dated December 12, 2002 (Attachment A), 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 substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY I88517, CBP ruled that a lower body dignity garment of 50% cotton/50% polyester knit with a 80% cotton/20% polyester knit terry cloth lining was classified in subheading 6104.53.2010, HTSUS, the provision for "women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: skirts and divided skirts: Of synthetic fibers: Other, women's" and a nylon or polyester lower body dignity garment was classified in subheading 6204.53.3010, HTSUS, the provision for "women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): skirts and divided skirts: Of synthetic fibers: Other, women's." Since the issuance of

that ruling, CBP has reviewed the classification of these items and has determined that the cited ruling is in error as it pertains to the lower body dignity garments. We have determined that the specialized usage of the lower body dignity garments causes them to not to be specifically described as skirts. Rather, they are classified as "other garments" of headings 6114, HTSUS, and 6211, HTSUS, due to their wear before or after bathing with assistance. Accordingly, the articles are properly classified in subheading 6114.30.3070, HTSUS, the provision for "other garments, knitted or crocheted: of man-made fibers: other; other: women's or girls'" and subheading 6211.43.0091, HTSUS, the provision for "track suits, ski-suits and swimwear; other garments: other garments, women's or girls': of man-made fibers, other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY I88517 and to revoke or modify any other ruling not specifically identified, to reflect the proper classification of lower body dignity garments according to the analysis contained in proposed Headquarters Ruling Letter (HQ) 966435, set forth as Attachment B 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: September 11, 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 I88517
December 12, 2002
CLA-2-62:RR:NC:3:353 I88517
CATEGORY: Classification
TARIFF NO.: 6204.53.3010, 6211.43.0091,
6104.53.2010, 6114.30.3070, 6210.10.9040

MS. ROBIN LENART
PERSONAL CARE WEAR
P.O. Box 15451
Brooksville, FL 36404

RE: The tariff classification of dignity garments from China.

DEAR MS. LENART:

In your letter dated November 14, 2002 you requested a classification ruling. The samples will be returned to you.

The submitted samples are a 4-piece Reusable Honor Guard Set and a 2-piece Disposable Honor Guard Set. Persons who are either bathing or attending to toilet duties who require a caregiver to be present wear the garments.

The 4-piece Reusable Honor Guard Set consists of a reusable Shower Shield, Chest Shield, Terry Topper and Terry Chest Shield. The Shower and Chest Shields are constructed of woven nylon or polyester fabric that has undergone a water-resistant treatment, and are lined with a knit polyester mesh fabric. The garments are worn while a person is bathing or attending to personal care. The Shower Shield is a wrap-around skirt with hook and loop fasteners at the waist. It features three panels that overlap, allowing entry for personal hygiene and removing undergarments. The Chest Shield is an upper body garment for women. It covers only the front of the upper torso and features a self-fabric neck with hook and loop fasteners, and hook and loop fasteners to attach it to the Shower Shield. The Terry Topper and Terry Chest Shield are constructed of a knit 50% cotton, 50% polyester fabric with a knit 80% cotton, 20% polyester terry cloth fabric lining. The garments are worn over the Shower and Chest Shields to allow for the modest removal of those garments. The Terry Topper is a wrap-around skirt with hook and loop fasteners at the waist. The Terry Chest Shield is an upper body garment for women. It covers only the front of the upper torso and features a self-fabric neck with hook and loop fasteners, and hook and loop fasteners to attach it to the Terry Topper. There will also be a 2-piece Reusable Honor Guard Set for men consisting of the Shower Shield and Terry Topper.

The 2-piece Disposable Honor Guard Set consists of a Disposable Shower Shield and Chest Shield constructed of nonwoven spunbonded meltblown polypropylene (SMS) fabric, lined with a knit polyester mesh fabric. The Disposable Shower Shield is a wrap-around skirt with hook and loop fasteners at the waist. It features three panels that overlap, allowing entry for personal hygiene and removing undergarments. The Disposable Chest Shield is an upper body garment for women. It covers only the front of the upper torso and features a self-fabric neck with hook and loop fasteners, and hook and loop fasteners to attach it to the Disposable Shower Shield. The Disposable Shower Shield is also sold separately for men.

The 4-piece Reusable Honor Guard Set consists of four garments, two upper body garments and two wrap-around skirts. The 2-piece Reusable Honor Guard Set consists of two garments, a knit and a woven wrap-around skirt. Note 13 of Section XI, of the HTSUSA, requires that the textile garments of different headings be separately classified, thus preventing the classification of items consisting of two or more garments as sets.

The applicable subheading for the Reusable Honor Guard Shower Shield will be 6204.53.3010, Harmonized Tariff Schedule of the United States (HTS), which provides for "Women's or girls' . . . dresses, skirts, divided skirts . . . knitted or crocheted: Skirts and divided skirts: Of synthetic fibers: Other, Women's." The duty rate for 2002 will be 16.2% ad valorem and for 2003 will be 16.1% ad valorem. The textile category designation is 642.

The applicable subheading for the Reusable Honor Guard Chest Shield will be 6211.43.0091, Harmonized Tariff Schedule of the United States (HTS), which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers, Other." The duty rate for 2002 will be 16.2% ad valorem and for 2003 will be 16.1% ad valorem. The textile category designation is 659.

The applicable subheading for the Reusable Honor Guard Terry Topper will be 6104.53.2010, Harmonized Tariff Schedule of the United States (HTS), which provides for "Women's or girls' . . . dresses, skirts and divided skirts . . . Skirts and divided skirts: Of synthetic fibers: Other, Women's." The duty rate for 2002 will be 16.2% ad valorem and for 2003 will be 16.1% ad valorem. The textile category designation is 642.

The applicable subheading for the Reusable Honor Guard Terry Chest Shield will be 6114.30.3070, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Women's or girls'." The duty rate for 2002 will be 15.1% ad valorem and for 2003 will be 15% ad valorem. The textile category designation is 659.

The applicable subheading for the Disposable Honor Guard Set and the Disposable Honor Guard Shower Shield will be 6210.10.9040, Harmonized Tariff Schedule of the United States (HTS), which provides for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Of fabrics of heading 5602 or 5603: Other, Other: Other, Other." The duty rate for 2002 will be 16.2% ad valorem and for 2003 will be 16.1% ad valorem. The textile category designation is 659.

Due to the fact that the Reusable Honor Guard Terry Topper and Terry Chest Shield are to be constructed of a 50/50 blend of fibers, they are classified using HTSUSA Section XI Note 2(A) and Subheading Note 2(A). The Terry Topper and Terry Chest Shield will be classified as if they consisted wholly of that one textile material which is covered by the heading which occurs last in numerical order among those which equally merit consideration. Even a slight change in the fiber content may result in a change of classification, as well as visa and quota requirements. The Terry Topper and Terry Chest Shield may be subject to U.S. Customs laboratory analysis at the time of importation, and if the fabric is other than a 50/50 blend it may be reclassified by Customs at that time.

Regarding a possible secondary classification in HTS 9817.00.96, we are returning your request for a classification ruling, and any related samples, exhibits, etc., because we need additional information in order to issue a ruling. Please submit the additional information indicated below:

While the information you submitted is sufficient to establish that the items are designed for the benefit of those suffering from an impairment which substantially limits the major life activity of caring for one's self, it does not directly address nor do you claim that it was designed for those with a permanent or chronic disability, as opposed to an "acute or transient disability" (U.S. Note 4-b-I to HTS Chapter 98, Subchapter 17). For example, Headquarters Ruling Letter 559916, 5-8-97, ruled that patient hospital gowns were not classified in 9817.00.96.

What features or other facts, if any, would make the use of either of your products unlikely by hospitals or home caregivers for use with those suffering from a transient disability, such as recovery from surgery?

Why do you sell a less durable, non-woven version? Can you point to any factors which would motivate a purchaser to choose the non-woven as opposed to the other? You state in your letter that it is disposable, and point to its use in unspecified facilities in which bodily fluids and laundering issues would be (particularly) important, but its packaging states, "Just rinse and hang dry for many uses." Explain.

If possible, please supply a complete VHS videotape copy (or a transcript if only that is available) of the QVC presentation you refer to.

When this information is available, you may wish to consider resubmission of your request in regard to the HTS 9817.00.96 issue. If you decide to resubmit your request, please include all of the material that we have returned to you and mail your request to U.S. Customs, Customs Information Exchange, 10th Floor, One Penn Plaza, New York, NY 10119, attn: Binding Rulings Section

The Reusable Honor Guard Shower Shield and Reusable Honor Guard Terry Topper fall within textile category designation 642; the Reusable Honor Guard Chest Shield, Reusable Honor Guard Terry Chest Shield, the Disposable Honor Guard Set and the Disposable Honor Guard Shower Shield fall within textile category designation 659. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

Please note that even if it is determined in the future that the articles are classified under 9817.00.60 and are not subject to the assessment of duty, they are still subject to quota restrictions and visa requirements.

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 646-733-3053.

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

[ATTACHMENT B]

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

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

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

DEAR MS. LENART:

This is in response to your letter, dated April 25, 2003, in which you requested reconsideration of New York Ruling Letter (NY) I88517, dated December 12, 2002, which classified a lower body garment, identified as a Reusable Honor Guard Terry Topper, of knit 50% cotton, 50% polyester fabric with a knit 80% cotton, 20% polyester terry cloth fabric lining in subheading 6104.53.2010, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Women's or girls' . . . dresses, skirts and divided skirts . . . Knitted or crocheted: Skirts and divided skirts: Of synthetic fibers: Other, Women's" and a lower body garment, identified as a Reusable Honor Guard Shower Shield, of woven nylon or polyester fabric that has undergone water resistant treatment and lined with a knit polyester mesh fabric, in subheading 6204.53.3010, HTSUS, which provides for "Women's or girls' . . . dresses, skirts and divided skirts . . . : Skirts and divided skirts: Of synthetic fibers: Other: Other: Women's."¹

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

FACTS:

The submitted samples consist of a Women's 4-piece Reusable Honor Guard Set consisting of a Shower Shield, Chest Shield, Terry Topper and Terry Chest Shield and a Men's 2-piece Reusable Honor Guard Set consisting of a Terry Topper and Shower Shield. The Shower and Chest Shield are comprised of woven nylon or polyester fabric which has undergone water resistant treatment and are lined with a knit polyester mesh fabric. The garments are worn during bathing or attending to personal care. The Shower Shield is a wrap with hook and loop fasteners at the waist. It features three overlapping panels that allow entry for personal hygiene and removing undergarments. The Chest Shield is an upper body garment designed for women. It covers the front of the torso and features a self-fabric neck and hoop and loop fasteners to attach to the Shower Shield. The Terry Topper

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

and Terry Chest Shield are made of 50% cotton, 50% polyester fabric with a knit 80% cotton, 20% polyester terry cloth fabric lining. They allow for modest removal of undergarments and/or the Shower and Chest Shield. The Terry Topper is a wrap with a partially elasticized waistband and a hook and loop closure that closes right over left. The Terry Chest Shield is an upper body garment for women which only covers the front of the torso. It features a self-fabric neck with hook and loop fasteners which attach to the Terry Topper. The samples will be returned to you per your request.

ISSUE:

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

LAW AND ANALYSIS:

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

The competing tariff headings are as follows:

Heading 6104—Women's or girls' suits, ensembles, jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted

OR

Heading 6114—Other garments, knitted or crocheted

AND

Heading 6204—Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear)

OR

Heading 6211—Track suits, ski suits and swimwear; other garments.

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

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

This heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of this Chapter.

The heading includes, *inter alia*:

- (1) Aprons, boiler suits (coveralls), smocks and other protective clothing of a kind worn by mechanics, factory workers, surgeons, etc.

* * *

- (4) Specialised clothing for airmen, etc. (e.g., airmen's electrically heated clothing).
- (5) Special articles of apparel used for certain sports or for dancing or for gymnastics (e.g. fencing clothing, jockeys' silks, ballet skirts, leotards).

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

The applicable EN's to heading 6114, apply *mutatis mutandis* to the articles of heading 6211. Accordingly, while the Shower Shield has the appearance of a skirt, it is only worn during bathing. Because of the limited and specialized usage of this merchandise, and the manner of its usage, the Shower Shield is neither commonly nor commercially known as a skirt. The Shower Shield cannot be classified as a skirt and is classifiable in heading 6211, HTSUS, as an other garment.

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

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

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

The chest shield remains classifiable in accordance with NY I88517.

HOLDING:

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

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

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

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**PROPOSED MODIFICATION AND REVOCATION OF RULING
LETTERS AND TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF RESORCINOL FORMALDEHYDE LA-
TEX TREATED FABRIC**

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) intends to modify one ruling and revoke four rulings relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain woven fabric treated with resorcinol formaldehyde latex (RFL). Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identi-

cal merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before October 31, 2003.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected 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: Timothy Dodd, Textiles Branch: (202) 572-8819.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify one ruling and revoke four rulings relating to the tariff classification of certain woven fabric treated with resorcinol formaldehyde latex (RFL). Although in this notice CBP is specifically referring to two Headquarters Ruling Letters and three New York Ruling Letters, this notice covers any rulings on this merchandise which may exist but have not been spe-

cifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the five identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, an internal advice memorandum or decision or a protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C.1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUS. Any person involved with substantially identical merchandise should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to this notice.

In Headquarters Ruling Letter (HQ) 087266 and HQ 087267, both dated August 16, 1990, and in New York Ruling Letter (NY) E87150, dated May 5, 2000, NY D83707, dated October 22, 1998, and NY 802177, dated February 2, 1995, CBP classified certain fabrics treated with resorcinol formaldehyde latex (RFL) in subheading 5906.99, HTSUSA, as rubberized textile fabrics. HQ 087266 (Attachment A), HQ 087267 (Attachment B), NY E87150 (Attachment C), NY D83707 (Attachment D) and NY 802177 (Attachment E) are set forth in the Attachments to this document.

It is now CBP's determination that the proper classification for the fabrics treated with RFL is either subheading 5407.42.00, HTSUSA, as woven fabrics of synthetic filament yarn or subheading 5208.11.2040, HTSUSA, as woven fabrics of cotton. HQ 966518 (Attachment F) revoking HQ 087266; HQ 966519 (Attachment G) revoking HQ 087267; (HQ) 966534 (Attachment H) modifying NY E87150; HQ 966536 (Attachment I) revoking NY D83707; and HQ 966535 (Attachment J) revoking NY 802177; are set forth in the Attachments to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY E87150 and to revoke HQ 087266, HQ 087267, NY D83707 and NY 802177, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analyses set forth in Proposed HQ 966534, HQ 966518, HQ 966519, HQ 966535 and HQ 966536, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP 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: September 12, 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 087266

August 16, 1990

CLA-2 CO:R:C:G 087266 CRS

CATEGORY: Classification

TARIFF NO.: 5906.99.1000

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

RE: Cotton plain woven fabrics used as carcass materials in the manufacture of machine belting and lightly coated with styrene-butadiene rubber are rubberized pursuant to Note 4(a), Chapter 59

DEAR MS. TROIANO:

This is reply to your letters of August 21, 1989, and March 30, 1988, concerning the classification of rubber dipped fabrics under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Fabric samples were submitted with your ruling request, as well as a flow chart and description of the dipping process.

FACTS:

The merchandise in question consists of four plain woven cotton rubberized fabrics (style nos. D2W, D3W, D5W and D6W).

The fabrics are made in and imported from Singapore and are used as carcass materials in the manufacture of machine belting for automotive and industrial equipment.

Style D2W weighs 6.4 ounces per square yard; style D3W, 7.8 ounces per square yard; style D5W, 10.9 ounces per square yard; and style D6W, 16.4 ounces per square yard. All four fabrics are unbleached.

The fabrics have been dipped in a rubber solution containing resorcin, formalin, styrene-butadiene rubber (SBR) and water.

The purpose of the rubber treatment is to facilitate the adhesion of the fabrics, which ultimately form the top and bottom layers of finished belting, to other materials used in the manufacture of belting such as cord fabric and

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

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

ISSUE:

Whether the fabrics in question are rubberized such that they are classifiable in heading 5906.

LAW AND ANALYSIS:

Heading 5906, HTSUSA, provides for rubberized textile fabrics, other than those of heading 5902 (tire cord fabric).

Note 4, Chapter 59, HTSUSA, provides in pertinent part:

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

- (a) Textile fabrics impregnated, coated, covered or laminated with rubber:
 - (i) Weighing not more than 1,500 g/m; or
 - (ii) Weighing more than 1,500 g/m and containing more than 50 percent by weight of textile material; All four sample fabrics weigh less than 1,500 g/m, the heaviest weighing 16.4 oz/yd, or approximately 556 g/m.

The Notes to Chapter 59 establish no other requirements for classification in heading 5906, i.e., there is no minimum rubber content, nor is there a requirement that coatings be visible to the naked eye as there is, for example, with plastic coated fabrics of heading 5903.

The fabrics at issue are lightly coated. The dipping solution is 5.67 percent rubber; the coatings as a percentage of total fabric weight range from 2.33 percent to 3.36 percent.

However, the presence of SBR was confirmed by laboratory analysis, although the amount of dipping compound extracted was found to be only one percent of the individual fabric weights.

Nevertheless, we understand that the extraction process is not always an accurate barometer of the degree of coating.

Note 11, Section XI, HTSUSA, provides that for the purposes of Section XI, "the expression 'impregnated' includes 'dipped.'" Coated, Filled, Bonded and Laminated Fabrics, USITC Pub. 841, Control No. 3-4-16 (October 1982) at 5, describes some of the methods used to coat fabrics. With regard to the dipping process the report states as follows:

Impregnation and dip coating—This method is generally used for the application of certain finishes when it is necessary to fully [sic] saturate the loose fabric. The base fabric passes directly through a bath of the coating material accumulating more coating material than needed. The excess material is then removed, usually by passing through another set of rollers. Some saturation coaters will have the newly dip coated fabric run through the same procedure for an additional coating.

According to the flow chart submitted as Attachment B to your letter of March 30, 1988, the fabrics in question are subjected to a dipping process similar to that described above. It is therefore Customs' view that the fabrics at issue are rubberized fabrics of heading 5906 pursuant to Note 4(a), Chapter 59.

However, since it can be difficult to detect the presence of coatings, future inquiries concerning rubberized fabrics should discuss the merchandise in depth. All pertinent information, including the type of coating (e.g., SBR), the amount of rubber present and the commercial purpose of the coating or impregnation should be submitted with ruling requests or attached to entry documentation in order to substantiate claims for classification in heading 5906.

HOLDING:

The fabrics in question are classifiable in subheading 5906.99.1000, HTSUSA, under the provision for rubberized fabrics . . . , other, other, of cotton, and are dutiable at the rate of 5.3 percent ad valorem.

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

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 087267
August 16, 1990
CLA-2 CO:R:C:G 087267 CRS
CATEGORY: Classification
TARIFF NO.: 5906.99.2500

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

RE: Rubber Dipped Polyester Fabric

DEAR MR. GARVIN:

This is in reply to your letter, dated September 5, 1989, to our Chicago office, on behalf of your client, Kosen Universal Corporation, in which you requested a binding ruling under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) concerning the classification of rubber dipped fabric.

Samples were submitted with your request.

FACTS:

The merchandise in question consists of three samples of rubber dipped, leno weave, polyester fabric manufactured in and imported from Japan. The fabric is used in the manufacture of reinforced water hose for the automotive industry.

The fabrics come in 80mm, 130mm and 150mm widths, weigh 200 g/m, and are imported in 210m rolls. The three fabrics are made from high tenacity, multiple yarns with a tenacity of 74 centinewtons per tex. The yarn size is 1,000 D/1 + 1,000 D/1 multiple. The thread count is 230 + 230/M in the warp and 410/M in the filling.

The fabrics are dipped in a solution containing Resorine (1.8%), Formalin (3.6%), styrene-butadiene rubber (29.2%), melamine (12.4%), water (48.8%) and other materials, including caustic soda (4.1%), for 60 seconds at a temperature of 150 degrees Celsius, and then are dried at 205 degrees Celsius for approximately 36 seconds. Rubber constitutes roughly 10 percent of the total fabric weight.

ISSUE:

Whether the fabric in question is a rubberized fabric such that it is classifiable in heading 5906, HTSUSA.

LAW AND ANALYSIS:

Heading 5906, HTSUSA, provides for rubberized textile fabrics, other than those of heading 5902 (tire cord fabric).

Note 4, Chapter 59, HTSUSA, provides in pertinent part:

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

- (a) Textile fabrics impregnated, coated, covered or laminated with rubber:
 - (i) Weighing not more than 1,500 g/m; or
 - (ii) Weighing more than 1,500 g/m and containing more than 50 percent by weight of textile material; The three fabrics at issue each weigh 200 g/m, have been treated with rubber, and thus are prima facie classifiable in subheading 5906.

Apart from weight, the Chapter Notes establish no other requirements for classification in heading 5906, i.e., there is no minimum rubber content, nor is there a requirement that coatings be visible to the naked eye as there is, for example, with plastic coated fabrics of heading 5903.

The fabrics at issue have been dipped in a rubber solution comprised of 29.2 percent SBR. The presence of rubber has been confirmed by laboratory analysis. Consequently, the fabrics at issue are classifiable as rubberized fabrics.

However, since it can be difficult to detect the presence of coatings, future inquiries concerning rubberized fabrics should discuss the merchandise in depth. All pertinent information, including the type of coating (e.g., SBR), the amount of rubber present and the commercial purpose of the coating or impregnation should be submitted with ruling requests or attached to entry documentation in order to substantiate claims for classification in heading 5906.

HOLDING:

The fabrics at issue are classifiable in subheading 5906.99.2500, HTSUSA, under the provision for rubberized textile fabrics, other than those of heading 5902, other, other, of man-made fibers, other, and is dutiable at the rate of 8.5 percent ad valorem. The textile category is 229.

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

may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY E87150

May 5, 2000

CLA-2-54:RR:NC:TA:352 E87150

CATEGORY: Classification

TARIFF NO.: 5407.41.0030; 5407.41.0060; 5906.99.2500

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

RE: The tariff classification of 8 woven fabric from United Kingdom.

DEAR MS. BROWN:

In your letter dated September 3, 2000, on behalf of your client John Heathcoat & Company Ltd., you requested a tariff classification ruling.

Eight samples accompanied your request for a ruling. The first, designated as style T0026 is an unbleached satin woven fabric composed of 100% filament nylon. It contains 91 warp ends per centimeter and 28 filling picks per centimeter. Weighing 120 g/m², this fabric will be imported in 111 centimeter widths. Style T0400 is an unbleached twill woven fabric composed of 100% filament nylon. It contains 43 warp ends per centimeter and 28 filling picks per centimeter. Weighing 230 g/m², this fabric will be imported in 101 centimeter widths. Style T0534 is an unbleached plain woven fabric composed of 100% filament nylon. It contains 13 warp ends per centimeter and 19 filling picks per centimeter. Weighing 365 g/m², this fabric will be imported in 135 centimeter widths. Style T0562 is an unbleached twill woven fabric composed of 100% filament nylon. It contains 32 warp ends per centimeter and 28 filling picks per centimeter. Weighing 355 g/m², this fabric will be imported in 117 centimeter widths. These four fabric described above will be further processed into transmission fabrics subsequent to importation.

Style T0148 Dipped is a plain woven fabric composed of 100% filament nylon. It contains 48 warp ends per centimeter and 18 filling picks per centimeter. Weighing 60 g/m², this product will be imported in 108 centimeter widths. This fabric has been dipped in resorcinol formaldehyde latex which prepares the fabric to be coated covered or laminated with rubber by promoting the adhesion of the rubber to the fabric. Style T0359 Dipped is a leno woven fabric composed of 100% filament nylon. It contains 32 warp ends per centimeter and 19 filling picks per centimeter. Weighing 70 g/m², this product will be imported in 80 centimeter widths. This fabric has been dipped in resorcinol formaldehyde latex which prepares the fabric to be coated covered or laminated with rubber by promoting the adhesion of the rubber to the fabric. The resorcinol formaldehyde latex is considered a rubber coating for the purposes of the Harmonized Tariff Schedules.

Style T0400 is a twill woven fabric composed of 100% filament nylon. It contains 43 warp ends per centimeter and 28 filling picks per centimeter. Weighing 250 g/m², this item will be imported in 101 centimeter widths. The fabric is said to have been dipped in a substance designated on your specification sheet as CSM. Style T0534 is a plain woven fabric composed of 100% filament nylon. It contains 13 warp ends per centimeter and 19 filling picks per centimeter. Weighing 380 g/m², this item will be imported in 135 centimeter widths. The fabric is said to have been dipped in a substance designated on your specification sheet as VP/SBR + CR.

The applicable subheading for the fabric designated as T0026 will be 5407.41.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404, other woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides, unbleached or bleached, other, weighing not more than 170 g/m². The rate of duty will be 15 percent ad valorem.

The applicable subheading for the fabrics designated as T0400, T0534, and T0562 will be 5407.41.0060, Harmonized Tariff Schedule of the United States (HTS), which provides for woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404, other woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides, unbleached or bleached, other, weighing more than 170 g/m². The rate of duty will be 15 percent ad valorem.

The applicable subheading for the fabric designated as T0148 Dipped and T0359 Dipped will be 5906.99.2500, Harmonized Tariff Schedule of the United States (HTS), which provides for rubberized textile fabrics, other than those of heading 5902, other, other, of man-made fibers, other. The rate of duty will be 3.4 percent ad valorem.

At this time we are unable to provide a ruling on the fabrics designated as styles T0400 Dipped and T0534 dipped. The Customs laboratory was not able to definitively identify the substances used in the coating of these fabric. In order to identify these substances the laboratory requires that you provide a detailed flow chart indicating each step in the processing of these fabrics along with the complete chemical name of the products used. In addition, please clarify the difference between the data labeled Fabric Treatment/Dyeing and resorcinol latex application specified on your spec sheets. Provide a sample of each of the coatings used. Finally, please describe the use of the end product as well as the function of the additional treatments that were done.

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 Alan Tytelman at 212-637-7092.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY D83707
October 22, 1998
CLA-2-59:RR:NC:TA:350 D83707
CATEGORY: Classification
TARIFF NO.: 5906.99.2500

MS. SUE QUADRINO
DANIEL F. YOUNG, INC.
17 Battery Place
New York, NY 1004-1101

RE: The tariff classification of two rubberized textile fabrics for use in conveyor belt reinforcement, from China.

DEAR MS. QUADRINO:

In your letter dated October 14, 1998, on behalf of Allied Signal (Kaiping) Industrial Fibers Co., Ltd., China, you requested a classification ruling.

Two representative samples were submitted which were identified as styles EP-200 and NN6-200, respectively. Style EP-200 consists of a woven fabric of man-made fiber construction that has been dipped in a Resorcinol Formaldehyde Latex (a rubber). The material is composed of 67% polyester, 27% Nylon 66 and 6% Resorcinol Formaldehyde Latex +IL-6 (Blocked diisocyanate), by weight. Style NN6-200 consists of a woven fabric that has also been dipped in a RFL solution. The material is composed of 94% Nylon 6 and 6% RFL, by weight. Both materials will be utilized in conveyor belt reinforcement applications.

The applicable subheading for the two materials will be 5906.99.2500, Harmonized Tariff Schedule of the United States (HTS), which provides for rubberized textile fabrics, other than knitted or crocheted, of man-made fibers, not over 70 percent by weight of rubber or plastics. The duty rate will be 5.1 percent ad valorem.

This merchandise falls within textile category designation 229. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

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 George Barth at 212-466-5884.

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

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY 802177
February 2, 1995
CLA-2-59:S:N:N6:350 802177
CATEGORY: Classification
TARIFF NO.: 5906.99.2500

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

RE: The tariff classification of a rubberized textile fabric resembling tire cord fabric, from China.

DEAR MR. THALER:

In your letter dated September 14, 1994, you requested a classification ruling. The instant sample, is of tire cord fabric construction, i.e., it consists of a warp containing numerous strong cords and a weft of fine yarns spaced about 3/4" apart to hold the warp in position. Tire cord fabric must be of high tenacity yarns. In the instant case, the warp yarns are 100% nylon and the weft yarns 100% cotton. (This works out to be 99% nylon and 1% cotton, by weight, respectively). This material has been dipped in a resorcinol formaldehyde latex (RFL). The New York Customs Laboratory tested the material for high tenacity yarns and, although, the warp yarns of the sample sent was not long enough for a complete analysis, based on a modified test, it was the Lab's opinion that the nylon yarns would not pass the test for high tenacity yarns. Tire cord fabric classified under 5902 . . . HTS, must be of the high tenacity type.

The applicable subheading for the product will be 5906.99.2500, Harmonized Tariff Schedule of the United States (HTS), which provides for rubber-

ized textile fabrics, other than knitted or crocheted, of man-made fibers, not over 70 percent by weight of rubber or plastics. The duty rate will be 7.6 percent ad valorem.

This merchandise falls within textile category designation 229. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

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. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

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

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

JEAN F. MAGUIRE,
*Area Director,
New York Seaport.*

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966518
CLA-2 RR:CR:TE
CATEGORY: Classification
TARIFF NO.: 5208.11.2040

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

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

DEAR MS. TROIANO:

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

FACTS:

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

The merchandise in question consists of four plain woven cotton rubberized fabrics (style nos. D2W, D3W, D5W and D6W). The fabrics are made in and imported from Singapore and are used as carcass materials in the manufacture of machine belting for automotive and industrial equipment.

Style D2W weighs 6.4 ounces per square yard; style D3W, 7.8 ounces per square yard; style D5W, 10.9 ounces per square yard; and style D6W, 16.4 ounces per square yard. All four fabrics are unbleached.

The fabrics have been dipped in a rubber solution containing resorcin, formalin, styrene-butadiene rubber (SBR) and water. The purpose of the rubber treatment is to facilitate the adhesion of the fabrics, which ultimately form the top and bottom layers of finished belting, to other materials used in the manufacture of belting such as cord fabric and rubber sheeting. The dipping solution is 5.68 percent rubber. As a percentage of total fabric weight, style D2W is 3.36 percent SBR, style D3W is 2.58 percent, style D5W is 2.33 percent and style D6W, 2.43 percent.

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

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

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

Dipping Solution

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

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

ISSUE:

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

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be de-

terminated according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings.

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

For the purposes of heading 5906, the expression “rubberized textile fabrics” means:

- (a) Textile fabrics impregnated, coated, covered or laminated with rubber:
 - i) Weighing not more than 1,500 g/m²; or
 - (ii) Weighing more than 1,500 g/m² and containing more than 50 percent by weight of textile material;

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

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

Thus, to consider a substance to be a rubber, Note 4(a) sets forth a two-pronged test. First, the substance must be vulcanized¹ (not merely cross-linked). Second, the vulcanized material must satisfy an extension-recovery test as described in Note 4(a). CBP has consistently applied this test to determine whether a substance is a “rubber” for tariff classification purposes. See *e.g.*, HQ 964704, dated April 11, 2001; HQ 963528, dated July 27, 2000; and HQ 956863, dated May 2, 1995.

In your original submission, you described the solution used to treat the

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

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

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

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

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

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

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

tive system normally used in making RFL fabric) passes the vulcanization test (the first prong) but fails the extensibility test (the second prong). To be considered a “synthetic rubber,” RFL must pass both prongs of the test. Because RFL, with or without additives, fails to pass the extensibility test set forth in Note 4(a) to chapter 40, HTSUSA, it cannot be considered a “synthetic rubber.” Since RFL is not a “synthetic rubber,” fabric treated with RFL cannot be classified in heading 5906, HTSUSA, as a rubberized textile fabric.

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

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

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

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

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

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

The Dictionary of Fiber & Textile Technology (1990) defines “dyeing” as “[a] process of coloring fibers, yarns, or fabrics with either natural or synthetic dyes.” Textile “dyes” are defined as “[s]ubstances that add color to textiles. They are incorporated by chemical reaction, absorption, or dispersion.”

Accordingly, with respect to dyeing, no particular intent or purpose is required. It is simply a treatment that colors a treated material.

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

HOLDING:

HQ 087266, dated August 16, 1990, is hereby REVOKED.

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

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

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT G]

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

MR. ROBERT GARVIN
NIPPON EXPRESS U.S.A., INC.
CHICAGO OCEAN CARGO BRANCH
950 N. Edgewood Avenue
Wood Dale, Illinois 60191

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

DEAR MR. GARVIN:

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

FACTS:

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

The fabrics come in 80mm, 130mm and 150 mm widths, weigh 200 g/m, and are imported in 210m rolls. The three fabrics are made from high tenacity, multiple yarns with a tenacity of 74 centinewtons per tex. The yarn size is 1,000 D/1 + 1,000 D/1 multiple. The thread count is 230 + 230/M in the warp and 410/M in the filling.

The fabrics are dipped in a solution containing Resorine [Resorcin] (1.8%), Formalin (3.6%), styrene-butadiene rubber (29.2%), melamine (12.4%), water (48.8%) and other materials, including caustic soda (4.1%), for 60 seconds at a temperature of 150 degrees Celsius, and then are dried at 205 degrees Celsius for approximately 36 seconds.

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

In your letter, received by CBP on September 5, 1989, you asserted that the "[r]atio of the rubber coating (dipping process) is approximately 10% of the basic fabric weight." While your statement was presented in the FACTS section of HQ 087267, we now note that the CBP laboratory analysis conducted at the time determined that the actual weight of the solution was approximately 1 percent of the fabric weight. We further note that in your letter describing the merchandise, you stated that the dipping solution

contained “Styrene Butadiene [*sic*] Rubber **Latex**.” (*Emphasis added*). Based on visual examination of the samples and a review of the ingredients used to make the dipping solution, the solution used to treat the three fabrics is effectively a variety of resorcinol formaldehyde latex (RFL).

ISSUE:

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

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings.

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

For the purposes of heading 5906, the expression “rubberized textile fabrics” means:

- (a) Textile fabrics impregnated, coated, covered or laminated with rubber:
 - i) Weighing not more than 1,500 g/m²; or
 - (ii) Weighing more than 1,500 g/m² and containing more than 50 percent by weight of textile material;

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

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

Thus, to consider a substance to be a rubber, Note 4(a) sets forth a two-pronged test. First, the substance must be vulcanized¹ (not merely cross-linked). Second, the vulcanized material must satisfy an extension-recovery test as described in Note 4(a). CBP has consistently applied this test to determine whether a substance is a “rubber” for tariff classification purposes. *See e.g.*, HQ 964704, dated April 11, 2001; HQ 963528, dated July 27, 2000; and HQ 956863, dated May 2, 1995.

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

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

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

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

During our review of HQ 087267, the Customs Laboratory determined that the SBR present in the solution consisted approximately of 60 percent styrene (plastic-like qualities) and 40 percent butadiene (rubber-like qualities). CBP had performed laboratory tests on the treated fabric samples without separately testing the RFL solution prior to it being applied to the fabric. Those laboratory analyses were made in part by infrared spectrometry, wherein the spectrograph bands or peaks were compared with known reference bands and appeared to indicate the presence of a type of SBR and a synthetic polymer. However, the mere presence of an SBR in the treated

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

fabric does not signify that the solution used to treat the fabric is actually a rubber for tariff classification purposes. For treated fabric to be considered a rubberized textile fabric, the RFL solution must first be considered a rubber by satisfying the requirements set forth in Note 4(a) to chapter 40, HTSUSA.

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

Based on the above analysis, we presume that the classification of the fabrics in HQ 087267 under subheading 5906.99.2500, as rubberized textile fabrics, was incorrect. This presumption is rebuttable if it can be demonstrated that the dipping solution meets the recovery, elongation and vulcanization requirements set forth in Note 4(a). This finding is consistent with HQ 089454, dated October 3, 1991, wherein Customs found styrene-butadiene rubber (SBR) that coated nylon fabric was precluded from consideration as rubber for heading 5906 purposes. See also 088273, dated August 8, 1991.

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

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

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

The next consideration is whether or not the RFL fabric is "dyed" according to the terms of the HTSUSA. Based on physical examination of the

samples under consideration, the styles are tinted orange as a result of the RFL treatment process. Subheading Note 1(g) to Section XI of the HTSUSA defines "dyed woven fabric" as woven fabric which:

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

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

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

HOLDING:

HQ 087267, dated August 16, 1990, is hereby REVOKED.

The three styles of woven polyester fabric treated with RFL are classified in subheading 5407.42.0030, HTSUSA, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides: Dyed: Weighing not more than 170 g/m²." The general one column rate of duty is 15.1 percent and the textile quota category is 620.

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

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT H]

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

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

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

DEAR MS. BROWN:

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

FACTS:

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

Style T0148 Dipped is a plain woven fabric composed of 100% filament nylon. It contains 48 warp ends per centimeter and 18 filling picks per centimeter. Weighing 60 g/m², this product will be imported in 108 centimeter widths. This fabric has been dipped in resorcinol formaldehyde latex which prepares the fabric to be coated covered or laminated with rubber by promoting the adhesion of the rubber to the fabric. Style T0359 Dipped is a leno woven fabric composed of 100% filament nylon. It contains 32 warp ends per centimeter and 19 filling picks per centimeter. Weighing 70 g/m², this product will be imported in 80 centimeter widths. This fabric has been dipped in resorcinol formaldehyde latex which prepares the fabric to be coated covered or laminated with rubber by promoting the adhesion of the rubber to the fabric. The resorcinol formaldehyde latex is considered a rubber coating for the purposes of the Harmonized Tariff Schedules.

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

ISSUE:

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

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General

Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings.

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

For the purposes of heading 5906, the expression “rubberized textile fabrics” means:

- (a) Textile fabrics impregnated, coated, covered or laminated with rubber:
 - i) Weighing not more than 1,500 g/m²; or
 - (ii) Weighing more than 1,500 g/m² and containing more than 50 percent by weight of textile material;

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

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

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

Resorcinol Formaldehyde Latex (RFL) is a commonly used treatment for rubber to fabric adhesions generally used on high-tenacity synthetic fabric to facilitate adhesion between fabric and rubber by improving the “grab” of rubber to textile. RFL is applied at the fabric mill where the treated fabric is dried and heat set at the same time, producing an orange tint to the fabric.

However, a more thorough examination of the physical characteristics of RFL reveals that RFL is not in fact a rubber.

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

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

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

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

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

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

fabric was precluded from consideration as rubber for heading 5906 purposes. See also 088273, dated August 8, 1991.

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

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

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

The next consideration is whether or not the RFL fabric is “dyed” according to the terms of the HTSUSA. While CBP no longer has samples of the styles under consideration¹, we presume that the styles were likely tinted orange as a result of the RFL treatment process. Subheading Note 1(g) to Section XI of the HTSUSA defines “dyed woven fabric” as woven fabric which:

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

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

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

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

HOLDING:

NY E87150, dated May 5, 2000, is hereby MODIFIED.

Styles T0148 Dipped and T0359 Dipped are classified in subheading 5407.42.0030, HTSUSA, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides: Dyed: Weighing not more than 170 g/m²." The general one column rate of duty is 15.1 percent and the textile quota category is 620.

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

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT I]

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

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

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

DEAR MS. QUADRINO:

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

classification for the two samples considered was incorrect. For the reasons that follow, this ruling revokes NY D83707.

FACTS:

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

Style EP-200 consists of a woven fabric of man-made fiber construction that has been dipped in a Resorcinol Formaldehyde Latex (a rubber). The material is composed of 67% polyester, 27% Nylon 66 and 6% Resorcinol Formaldehyde Latex +IL-6 (Blocked diisocyanate), by weight.

Style NN6-200 consists of a woven fabric that has also been dipped in a RFL solution. The material is composed of 94% Nylon 6 and 6% RFL, by weight. Both materials will be utilized in conveyor belt reinforcement applications.

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

ISSUE:

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

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings.

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

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

- (a) Textile fabrics impregnated, coated, covered or laminated with rubber:
 - i) Weighing not more than 1,500 g/m²; or
 - (ii) Weighing more than 1,500 g/m² and containing more than 50 percent by weight of textile material;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

styles under consideration¹, we presume that the styles were likely tinted orange as a result of the RFL treatment process. Subheading Note 1(g) to Section XI of the HTSUSA defines “dyed woven fabric” as woven fabric which:

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

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

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

HOLDING:

NY D83707, dated October 22, 1998, is hereby REVOKED.

Style EP-200 and style NN6-200 are classified in subheading 5407.42.0030, HTSUSA, which provides for “Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides: Dyed: Weighing not more than 170 g/m².” The general one column rate of duty is 15.1 percent and the textile quota category is 620.

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

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

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

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

MYLES B. HARMON,
Director
Commercial Rulings Division.

[ATTACHMENT J]

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

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

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

DEAR MR. THALER:

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

FACTS:

In NY 802177, CBP described the merchandise as follows:

The instant sample, is of tire cord fabric construction, i.e., it consists of a warp containing numerous strong cords and a weft of fine yarns spaced about 3/4" apart to hold the warp in position. Tire cord fabric must be of high tenacity yarns. In the instant case, the warp yarns are 100% nylon and the weft yarns 100% cotton. (This works out to be 99% nylon and 1% cotton, by weight, respectively). This material has been dipped in a resorcinol formaldehyde latex (RFL). The New York Customs Laboratory tested the material for high tenacity yarns and, although, the warp yarns of the sample sent was [sic] not long enough for a complete analysis, based on a modified test, it was the Lab's opinion that the nylon yarns would not pass the test for high tenacity yarns. Tire cord fabric classified under 5902 . . . HTS, must be of the high tenacity type.

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

ISSUE:

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

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings.

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

For the purposes of heading 5906, the expression “rubberized textile fabrics” means:

- (a) Textile fabrics impregnated, coated, covered or laminated with rubber:
 - i) Weighing not more than 1,500 g/m²; or
 - (ii) Weighing more than 1,500 g/m² and containing more than 50 percent by weight of textile material;

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

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

Thus, to consider a substance to be a rubber, Note 4(a) sets forth a two-pronged test. First, the substance must be vulcanized (not merely cross-

linked). Second, the vulcanized material must satisfy an extension-recovery test as described in Note 4(a). CBP has consistently applied this test to determine whether a substance is a “rubber” for tariff classification purposes. *See e.g.*, HQ 964704, dated April 11, 2001; HQ 963528, dated July 27, 2000; and HQ 956863, dated May 2, 1995.

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

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

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

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

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

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

“synthetic rubber.” Since RFL is not a “synthetic rubber,” fabric treated with RFL cannot be classified in heading 5906, HTSUSA, as a rubberized textile fabric.

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

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

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

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

The next consideration is whether or not the RFL fabric is “dyed” according to the terms of the HTSUSA. While CBP no longer has samples of the styles under consideration¹, we presume that the styles were likely tinted orange as a result of the RFL treatment process. Subheading Note 1(g) to Section XI of the HTSUSA defines “dyed woven fabric” as woven fabric which:

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

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

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

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

HOLDING:

NY 802177 is hereby REVOKED.

The subject merchandise is classified in subheading 5407.42.0030, HTSUSA, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides: Dyed: Weighing not more than 170 g/m²." The general one column rate of duty is 15.1 percent and the textile quota category is 620.

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

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF MET-PLUS, A RUMEN PROTECTED METHIONINE ADDITIVE

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

ACTION: Notice of revocation of tariff classification ruling letters and treatment relating to the classification of Met-Plus, a rumen protected methionine additive.

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

Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking two rulings concerning the tariff classification of Met-Plus, a rumen protected methionine additive, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation of one of the rulings was published on July 23, 2003, in Volume 37, Number 30, of the *Customs Bulletin*. One comment was received in response to this notice. That comment agreed with the proposal and identified another ruling on the same merchandise suitable for revocation as well.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after November 30, 2003.

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, Customs published a notice in the July 23, 2003, *Customs Bulletin*, Volume 37, Number 30, proposing to revoke New York Ruling Letter (NY) I83524, dated July 31, 2002, and to revoke any treatment accorded

to substantially identical merchandise. One comment was received in response to this notice that supported the proposed revocation. The comment identified NY H86670, dated March 18, 2002, issued to Nisso America Inc., subsequently acquired by the commenter, which also classified Met-Plus, the same merchandise, in subheading 3824.90.9150, HTSUS. Accordingly, this notice also covers the revocation of NY H86670.

In NY I83524 and in NY H86670, the merchandise was classified in subheading 3824.90.28, HTSUS, which provides for “[p]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: [o]ther: [o]ther, [m]ixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: [o]ther.”

It is now Customs position that this substance was not correctly classified in NY I83524 and NY H86670 because it is more specifically provided for in subheading 2309.90.95, HTSUS, the provision for: “[p]reparations of a kind used in animal feeding: [o]ther: [o]ther: [o]ther: [o]ther: [o]ther.”

As stated in the proposed notice, this revocation will cover any rulings on this issue 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 issue subject to this notice, should have advised Customs 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 Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer’s or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer’s reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Customs, pursuant to section 625(c)(1), is revoking NY I83524, NY H86670, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 966203 and 966679, respectively, set forth as attachments “A” and “B” to this notice. Additionally, pursuant to section 625(c)(2), Customs is revoking any

treatment previously accorded by Customs to substantially identical transactions.

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

Dated: September 15, 2003

James A. Seal for MYLES B. HARMON,
Director;
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966203
September 15, 2003
CLA-2 RR:CR:GC 966203 AM
CATEGORY: LASSIFICATION
TARIFF NO.: 2309.90.95

MR. JOHN M. PETERSON
NEVILLE PETERSON LLP
80 Broad Street, 34th Floor
New York, N.Y. 10004

Re: Revocation of NY I83524; Met-Plus, a rumen protected methionine additive

DEAR MR. PETERSON:

This is our decision regarding your letter, dated January 23, 2003, addressed to the Director, National Commodity Specialist Division, on behalf of your client, BioZyme Inc., requesting reconsideration of New York Ruling Letter (NY) I83524, dated July 31, 2002, regarding the tariff classification, pursuant to the Harmonized Tariff Schedule of the United States (HTSUS), of Met-Plus, a rumen protected methionine additive. Your letter was forwarded to this office for reply. We have reviewed this ruling and believe it is incorrect.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY I83524 was published on July 23, 2003, in the *Customs Bulletin*, Volume 37, Number 30. One comment was received in response to this notice. That comment agreed with the proposal and identified another ruling suitable for revocation.

FACTS:

DL-Methionine, an amino acid essential for milk production in dairy cows, has the chemical formula $C_5H_{11}NO_2S$ and is assigned the CAS number 59-51-8I. Met-Plus is a coated methionine product which increases the amount

of post-ruminally available methionine in dairy cows. It is a white, fine grain mixture that consists of a minimum of 65% DL-Methionine, calcium salts of long-chain fatty acids, lauric acid and BHT as a preservative in the calcium salts.

In NY I83524, the merchandise was classified in subheading 3824.90.28, HTSUS, which provides for: “[p]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: [o]ther: [o]ther: [m]ixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: [o]ther.”

ISSUE:

Is Met-Plus an animal feed supplement under the HTSUS?

LAW AND ANALYSIS:

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

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

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

The HTSUS headings under consideration are as follows:

| | |
|------------|--|
| 2309 | Preparations of a kind used in animal feeding: |
| 2309.90 | Other: |
| | Other: |
| | Other: |
| 2309.90.95 | Other |
| * * * * * | |
| 3824 | Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting |

of mixtures of natural products), not elsewhere specified or included:

3824.90

Other:

Other:

Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances:

3824.90.28

Other

The ENs to heading 23.09, HTSUS, state, in pertinent part, as follows:

This heading covers sweetened forage and prepared animal feeding stuffs consisting of a mixture of several nutrients designed:

- (1) to provide the animal with a rational and balanced daily diet (**complete feed**);
- (2) to achieve a suitable daily diet by supplementing the basic farm-produced feed with organic or inorganic substances (**supplementary feed**); or
- (3) for use in making complete or supplementary feeds.

HQ 964600, dated June 21, 2001, relied on the EN above, requiring a prepared animal feeding product to consist of "a mixture of nutrients" for inclusion in heading 2309, HTSUS. Following the reasoning in HQ 964600, NY I83524 failed to classify the instant product as a preparation for use in animal feeding because it contained but one active ingredient, which, if imported without coating, is classified in Chapter 29. The other ingredients simply coat the active ingredient for better digestion in bovines. NY I83524 concluded that this type of coated single ingredient added to a premix was not the type of "preparation" the heading and ENs contemplated for inclusion because the ENs specifically describe preparations as those containing "a mixture of several nutrients."

We find that NY I83524 ignores the fact that the methionine, calcium long chain fatty acids and lauric acid in the instant merchandise each constitute a nutritive ingredient. Our research indicates that calcium salts of long chain fatty acids are a rumen inert fat supplement that helps provide the required energy for increased milk production, better body condition and reproductive efficiency. Lauric acid is a medium chain fatty acid that converts to monolaurin in the body, an antiviral, antibacterial and antiprotozoal monoglyceride that destroys lipid-coated cells such as herpes, cytomegalovirus, influenza, listeria monocytogenes and giardia lanblia. Monolaurin also effects insulin secretion and can induce a proliferation of T-cells. As such, methionine, calcium salts of long chain fatty acids and lauric acid are all nutrients. Hence, Met-Plus is a mixture of several nutrients. Therefore, it is classified in subheading 2309.90.95, HTSUS, the provision for "[p]reparations of a kind used in animal feeding: [o]ther: [o]ther: [o]ther: [o]ther: [o]ther."

HOLDING:

At GRI 1, Met-Plus is classified in subheading 2309.90.95, HTSUS, the provision for "[p]reparations of a kind used in animal feeding: [o]ther: [o]ther: [o]ther: [o]ther."

EFFECT ON OTHER RULLINGS:

NY I83524 is REVOKED.

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

James A. Seal for MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966679
September 15, 2003
CLA-2 RR:CR:GC 966679 AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 2309.90.95

MR. JOHN M. PETERSON
NEVILLE PETERSON LLP
80 Broad Street, 34th Floor
New York, N.Y. 10004

Re: Revocation of NY H86670; Met-Plus, a rumen protected methionine additive

DEAR MR. PETERSON:

This is our decision regarding your letter, dated August 11, 2003, on behalf of your client, BioZyme Inc., regarding the tariff classification, pursuant to the Harmonized Tariff Schedule of the United States (HTSUS), of Met-Plus, a rumen protected methionine additive.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY H87232 was published on January 15, 2003, in the CUSTOMS BULLETIN, Volume 37, Number 30. Your favorable comment was received in response to this notice.

You also indicated that another ruling, NY H86670, dated March 18, 2002, issued to Nisso America, the former owner of the BioZyme product's rights, classified the same merchandise in the same tariff provision as did NY I83524. You suggested NY H86670 be revoked as well to avoid confusion of the matter.

FACTS:

DL-Methionine, an amino acid essential for milk production in dairy cows, has the chemical formula $C_5H_{11}NO_2S$ and is assigned the CAS number 59-51-8I. Met-Plus is a coated methionine product which increases the amount of post-ruminally available methionine in dairy cows. It is a white, fine grain mixture that consists of a minimum of 65% DL-Methionine, calcium salts of long-chain fatty acids, lauric acid and BHT as a preservative in the calcium salts.

In NY H86670, the merchandise was classified in subheading 3824.90.28, HTSUS, which provides for: “[p]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: [o]ther: [o]ther: [m]ixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances: [o]ther.”

ISSUE:

Is Met-Plus an animal feed supplement under the HTSUS?

LAW AND ANALYSIS:

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

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

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

The HTSUS headings under consideration are as follows:

| | |
|------------|---|
| 2309 | Preparations of a kind used in animal feeding: |
| 2309.90 | Other: |
| | Other: |
| | Other: |
| | Other: |
| 2309.90.95 | Other |
| * * * * * | |
| 3824 | Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: |
| 3824.90 | Other: |
| | Other: |

Mixtures containing 5 percent or more by weight of one or more aromatic or modified aromatic substances:

3824.90.28

Other

The ENs to heading 23.09, HTSUS, state, in pertinent part, as follows:

This heading covers sweetened forage and prepared animal feeding stuffs consisting of a mixture of several nutrients designed:

- (1) to provide the animal with a rational and balanced daily diet (**complete feed**);
- (2) to achieve a suitable daily diet by supplementing the basic farm-produced feed with organic or inorganic substances (**supplementary feed**); or
- (3) for use in making complete or supplementary feeds.

HQ 964600, dated June 21, 2001, relied on the EN above, requiring a prepared animal feeding product to consist of “a mixture of nutrients” for inclusion in heading 2309, HTSUS. Following the reasoning in HQ 964600, NY H86670 failed to classify the instant product as a preparation for use in animal feeding because it contained but one active ingredient, which, if imported without coating, is classified in Chapter 29. The other ingredients simply coat the active ingredient for better digestion in bovines. NY H86670 concluded that this type of coated single ingredient added to a premix was not the type of “preparation” the heading and ENs contemplated for inclusion because the ENs specifically describe preparations as those containing “a mixture of several nutrients.”

We find that NY H86670 ignores the fact that the methionine, calcium long chain fatty acids and lauric acid in the instant merchandise each constitute a nutritive ingredient. Our research indicates that calcium salts of long chain fatty acids are a rumen inert fat supplement that helps provide the required energy for increased milk production, better body condition and reproductive efficiency. Lauric acid is a medium chain fatty acid that converts to monolaurin in the body, an antiviral, antibacterial and antiprotozoal monoglyceride that destroys lipid-coated cells such as herpes, cytomegalovirus, influenza, listeria monocytogenes and giardia lanblia. Monolaurin also effects insulin secretion and can induce a proliferation of T-cells. As such, methionine, calcium salts of long chain fatty acids and lauric acid are all nutrients. Hence, Met-Plus is a mixture of several nutrients. Therefore, it is classified in subheading 2309.90.95, HTSUS, the provision for “[p]reparations of a kind used in animal feeding: [o]ther: [o]ther: [o]ther: [o]ther: [o]ther.”

HOLDING:

At GRI 1, Met-Plus is classified in subheading 2309.90.95, HTSUS, the provision for “[p]reparations of a kind used in animal feeding: [o]ther: [o]ther: [o]ther: [o]ther.”

EFFECT ON OTHER RULLINGS:

NY H86670 is REVOKED.

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

James A. Seal for MYLES B. HARMON,
Director,
Commercial Rulings Division.

MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF CARPENTERS' APRONS OF LENGTHS OF TWENTY INCHES MADE OF DURABLE FABRIC AND WHICH AFFORD PROTECTION TO THE CLOTHING WORN UNDER THE APRON

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

ACTION: Notice of modification of one ruling letter and revocation of treatment relating to the tariff classification of carpenters' aprons of lengths of twenty inches that are made of durable fabric and cover a significant aspect of the wearer's clothing such that they afford protection for the clothing worn under the aprons.

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 modifying one ruling letter relating to the classification of carpenters' aprons. CBP is also revoking any treatment previously accorded by it to substantially identical transactions.

Notice of the proposed action was published on May 14, 2003, in the *Customs Bulletin*, Volume 37, Number 20. One comment was received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 30, 2003.

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textiles Branch: (202) 572-8790.

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 emerged 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, notice proposing to modify Headquarters Ruling Letter (HQ) 084324 (July 26, 1989) was published in the *Customs Bulletin*, Volume 37, Number 20, on May 14, 2003. One comment was received in response to the notice of proposed action. The comment suggested that carpenters’ aprons, such as those in the ruling letter subject to modification, are not used to protect a carpenter’s clothing but are, rather, used to organize and carry carpenters’ tools. The comment noted that the garments are traditionally called “aprons,” but stated that they might more appropriately be referred to as “tool pouches.”

As was stated in the notice of proposed action, the notice covered any rulings which may have existed but which had not specifically been 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, which classified substantially similar merchandise contrary to the notice, should have advised 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 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 have advised CBP during the notice period. An importer’s failure to have advised 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 importation of merchandise subsequent to the effective date of this notice.

Customs and Border Protection in HQ 084324 concluded that carpenters' aprons of lengths of twenty inches and made of cotton fabric were classified in subheadings 6307.90.9930, HTSUSA. CBP classified the merchandise as "other made-up articles."

After reviewing HQ 084324, it is CBP's determination that it is erroneous as they relate to carpenters' aprons of lengths of twenty inches. Carpenters' aprons of the above-length are "other protective clothing" and properly classified as "other garments" in subheading 6211.42.0081, HTSUSA. Headquarters Ruling Letters 966339, modifying HQ 084324, is set forth as Attachments "A" to this document.

The carpenters' aprons in issue are properly identified as "other protective clothing." The garments are "of a kind that have special design features or unique properties that distinguish them from other garments that are not used for protective purposes." HQ 959136 (Nov. 27, 1996). The aprons are made of durable fabric and cover a significant aspect of the wearer's clothing such that they afford protection for the clothing worn under the aprons. The articles may be used to organize carpenters' tools, but they particularly afford protection for carpenters' clothing.

Customs and Border Protection published a notice in the *Customs Bulletin*, Volume 37, Number 35 (Aug. 27, 2003) which identified HQ 966339 as modifying HQ 084324, but did not include HQ 966339 as an attachment. This notice is intended to rectify that situation.

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

DATED: September 15, 2003

Cynthia M. Reese for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966339
July 31, 2003
CLA-2 RR:CR:TE 966339 jsj
CATEGORY: Classification
TARIFF NO.: 6211.42.0081

ARMSTRONG GLOBAL
P.O. Box 117
Muscotah, Kansas 66058

Re: Modification of HQ 084324 (July 26, 1989); Bib-Type Carpenter's Apron, Style C-75; "Other Protective Clothing"; Heading 6211, HTSUS; Explanatory Note 62.14.

DEAR SIR OR MADAM:

The purpose of this correspondence is to respond to a request of the National Commodity Specialist Division of the Bureau of Customs and Border Protection (CBP) to reconsider Headquarters Ruling Letter 084324 (July 26, 1989). Headquarters Ruling Letter 084324 was issued to Armstrong Global. The article in issue in HQ 084324 that is subject to this reconsideration and modification is the bib-type carpenter's apron, identified as style C-75.

CBP, subsequent to reconsidering HQ 084324, is modifying that ruling letter as it relates to the classification of the bib-type carpenter's apron identified as style C-75 pursuant to the analysis set forth in this ruling letter.

Pursuant to section 625 (c), Tariff Act of 1930, as amended, 19 U.S.C. 1625 (c), notice of the proposed modification of HQ 084324 was published on May 14, 2003, in the Customs Bulletin, Volume 37, Number 20. The only comment received was from Armstrong Global.

FACTS

The article in issue is the bib-type carpenter's apron, identified as style C-75. It was described in HQ 084324 as follows:

Style number C-75 is a bib-type carpenter's apron and measures approximately 20 inches long by 23-1/2 inches wide with 14 pockets and two loops, one at each side. The apron is composed of 100 percent cotton woven fabric. It is designed to be worn around the neck and tied around the waist.

ISSUE

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described bib-type carpenter's apron, style C-75, that measures approximate twenty (20) inches in length?

LAW AND ANALYSIS

The federal agency responsible for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is the Bureau of Customs and Border Protection.¹ CBP, in accordance with its legislative mandate, classifies imported merchandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.²

General Rule of Interpretation 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." General Rule of Interpretation 1. General Rule of Interpretation 1 further states that merchandise which cannot be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation, provided the HTSUSA chapter headings or notes do not require otherwise. According to the Ex-

¹ See 19 U.S.C. 1500 (West 1999) (providing that the Customs Service is responsible for fixing the final appraisal, classification and amount of duty to be paid); See also Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 100-576, at 549 (1988) reprinted in 1988 U.S. Code Cong. and Adm. News 1547, 1582 [hereinafter Joint Explanatory Statement].

² See 19 U.S. C. 1202 (West 1999); See generally, *What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of Customs and Border Protection available on the World Wide Web site of the CBP at www.cbp.gov. 1 4 1 99

aprons in issue are properly identified as "other protective clothing." The garments are "of a kind that have special design features or unique properties that distinguish them from other garments that are not used for protective purposes." HQ 959136. The articles may be used to organize carpenters' tools, but they also afford protection for the carpenters' clothing.

HOLDING

Headquarters Ruling Letter 084324 (July 26, 1989) has been reconsidered and is modified as it relates to the bib-type carpenter's apron identified as style C-75.

The bib-type carpenter's apron identified as style C-75 is classified in sub-heading 6211.42.0081, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is eight and two-tenths (8.2) percent, ad valorem.

The textile quota category is 359.

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

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

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

