

# Bureau of Customs and Border Protection

## *General Notices*

### **RECORDATION OF TRADE NAME: "YOUPAL"**

**ACTION:** Notice of application for recordation of trade name.

**SUMMARY:** Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "YOUPAL". The trade name is owned by Youpal International, Inc., an Arkansas corporation organized and created in the State of Arkansas, 6900 Cantrell Road, E6, Little Rock Arkansas 72207.

The application states that the applicant is the importer, exporter and manufacturer of Titanium Folding Bicycles and Carbon Folding Bicycles. The applicant also states that the trade name "YOUPAL" is solely and exclusively owned and operated by Youpal International, Inc., and supervises the manufacturing process for three model (SFM585F; SFM820F; SEF468BBS), bicycles, including the design, the standards used, and the product's parts. The merchandise is manufactured in China.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

**DATE:** Comments must be received on or before October 20, 2003.

**ADDRESS:** Written comments should be addressed to the Department of Homeland Security, Bureau of Customs and Border Protection, Attention: Office of Regulations & Rulings, Intellectual Property Rights Branch, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Gwendolyn D. Savoy, Intellectual Property Rights Branch, at (202) 572-8710).

Dated: October 10, 2003

GEORGE FREDERICK MCCRAY, ESQ.,  
*Chief,*  
*Intellectual Property Rights Branch.*

[Published in the Federal Register, October 20, 2003 (?? FR ?????)]

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

*Washington, DC, October 15, 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.*

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REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF FOOTWEAR PARTS

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

**ACTION:** Notice of revocation of ruling letter and treatment relating to the tariff classification of footwear uppers and sock liners.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking a ruling letter pertaining to the tariff classification of footwear uppers and sock liners, and revoking any treatment previously accorded by CBP to substantially identical merchandise. Notice of the proposed revocation was published on September 3, 2003, in the Customs Bulletin, Volume 37, Number 36. One comment was received.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Greg Deutsch, Textiles Branch, at (202) 572-8811.

**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, as amended (19 U.S.C. § 1625(c)(1)), notice proposing to revoke New York Ruling Letter (NY) J82823, dated April 7, 2003, was published in the Customs Bulletin, Volume 37, Number 36, on September 3, 2003. One comment was received in response. The commenter supported the proposed revocation and urged that it be adopted.

As was stated in the notice of proposed revocation, the notice covered any rulings relating to the specific issues of tariff classification set forth in the ruling, which may have existed but which had not been specifically identified. 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 issues subject to the notice, should have advised CBP during the notice period.

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

In NY J82823, leather uppers for men’s boots that were imported with an equal number of unattached sock liners, were found to com-

prise unassembled formed uppers pursuant to GRI 2(a). For American men's sizes 8-1/2 and larger, the articles were classified in subheading 6406.10.05, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), the provision for "Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Uppers and parts thereof, other than stiffeners: Formed uppers: Of leather or composition leather: For men, youths and boys." CBP has determined that the sock liner is not the component that will be assembled to the upper to close the bottom, and that a closed bottom results only after importation, when the upper is both front-part and back-part lasted and an insole component (not present at importation) is assembled to the upper. The upper and sock liner are therefore separately classified; the upper in subheading 6406.10.65, HTSUSA, the provision for "Parts of footwear . . . : Uppers and parts thereof, other than stiffeners: Other: Of leather," and the inner sole/sock liner in subheading 6406.99.90, HTSUSA, the provision for "Parts of footwear . . . : Other: Of other materials: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY J82823 and any other rulings not specifically identified, to reflect the proper classification of the footwear parts according to the analysis in Headquarters Ruling Letter (HQ) 966429, which is set forth as an Attachment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment that CBP may have previously accorded to substantially identical transactions that is contrary to the position set forth in this notice.

**DATED:** October 8, 2003

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 966429  
October 8, 2003  
CLA-2 RR:CR:TE 966429 GGD  
CATEGORY: Classification  
TARIFF NO.: 6406.10.65; 6406.99.90

JOHN B. PELLEGRINI, ESQUIRE  
MCGUIREWOODS, LLP  
*Park Avenue Tower  
65 East 55th Street  
New York, New York 10022-3219*

RE: Revocation of NY J82823; Men's Boot Upper Imported with Sock Liner;  
Not Formed Upper

DEAR MR. PELLEGRINI:

This is in response to your request dated April 16, 2003, to reconsider New York Ruling Letter (NY) J82823, issued to you by the Bureau of Customs and Border Protection (CBP) April 7, 2003, on behalf of your client, The Timberland Company. In NY J82823, leather uppers imported with an equal number of unattached sock liners were found to comprise unassembled formed uppers pursuant to General Rule of Interpretation (GRI) 2(a). Samples of each component were submitted with your request. We have reviewed the ruling and have found it to be in error. Therefore, this ruling revokes NY J82823.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)), notice of the proposed revocation of NY J82823 was published on September 3, 2003, in the *Customs Bulletin*, Volume 37, Number 36. We note that the comment you submitted on behalf of your client supported the correctness of the proposed action.

FACTS:

The footwear components at issue herein and in NY J82823, are leather uppers for a man's boot, imported with equal numbers of unattached sock liners. The upper is completely open at the bottom and, although neither front-part nor back-part lasted, is shaped by molded plastic stiffeners that have been stitched in at the heel and front vamp. The sock liner is composed of four separate materials in three layers. The top layer (the surface upon which the foot would rest) is made of a combination of leather (at the back) and nonwoven textile material (at the front), with leather making up the majority of the surface area. The middle layer is composed of a foam rubber/plastic and the bottom layer consists of a paperboard material identified as BONTEX®.

Although at the time of importation, the bottom of the upper is not closed, the upper and sock liner, imported together, were found to constitute an unassembled "formed upper" pursuant to GRI 2(a). Therefore, for American men's sizes 8-1/2 and larger, the article was classified in subheading 6406.10.05, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), the provision for "Parts of footwear (including uppers whether or not attached to soles other than outer soles); removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof: Uppers and parts thereof, other than stiffeners: Formed uppers: Of leather or composition leather: For men, youths and boys." For sizes up to,

and including, American men's size 8, the article was classified in subheading 6406.10.10, HTSUSA, the provision for "Parts of footwear . . . : Uppers and parts thereof . . . : Formed uppers: Of leather or composition leather: For other persons."

ISSUE:

Whether the two footwear components, as entered, constitute an unassembled "formed upper" pursuant to GRI 2(a), HTSUSA.

LAW AND ANALYSIS:

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

Subheading 6406.10, HTSUS, provides for "Parts of footwear (including uppers whether or not attached to soles other than outer soles) . . . : Uppers and parts thereof, other than stiffeners: Formed uppers: Of leather or composition leather."

Additional U.S. Note 4 to chapter 64, HTSUS, states:

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

The sample goods consist of an upper with an open bottom and a sock liner. Although the upper has not been shaped by lasting, examination of the sample indicates that it has attained a certain degree of shape by the insertion of molded plastic stiffeners at the heel and front vamp. (See Headquarters Ruling Letter (HQ) 958265, dated August 7, 1995, concerning shape imparted by stitched-in counter pieces.) With respect to the legal note's requirement for closed bottoms, NY J82823 cited to HQ 954790, dated September 28, 1993, for the latter ruling's statement that:

the term "formed uppers" does not include moccasin uppers with a significant sized hole (the size of a nickel or larger) in the bottom layer whether or not the upper is fully formed (lasted) unless the piece which will cover that opening is in the same shipment.

Considering the sock liner as a piece capable of covering the upper's opening, NY J82823 also examined the requirements of GRI 2(a), which states:

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

Drawing from both HQ 954790 and the requirements of GRI 2(a), it was determined in NY J82823 that the sock liner, once assembled to the bottom of the leather boot upper, would cover the upper's opening (creating a closed bottom), and that the two components therefore had the essential character of a complete or finished "formed upper" entered unassembled.

In your submission, you essentially state that this combination of uppers and sock liners must be classified separately and cannot be constructively assembled because: 1) the upper is neither front-part nor back-part lasted, thus lacking its final shape and ability to have a closed bottom through assembly with only the sock liner; 2) the upper acquires a closed bottom only through post-importation processing (which includes back-part lasting, attachment of an insole component that is not present at importation, and steaming/shaping of toe and heel); and 3) the sock liner is never attached to the upper but, after application of an adhesive, is inserted by hand into the essentially complete boot as part of the packing process.

You cite to several CBP rulings (the most persuasive of which appear to be HQ 088483, dated March 19, 1991, and HQ 089580, dated September 6, 1991) to support your contention that uppers must be both front-part and back-part lasted in order for an insole/sock liner to be deemed constructively assembled pursuant to GRI2(a). You also refer to the "constructive assembly" of the upper and sock liner at issue as "fictional" and not within the purview of GRI 2(a), because the formed upper, in reality, is constructed of both imported and domestic articles, or of articles which are imported in different shipments.

In light of the components used, and the further working operations required after importation to assemble a formed upper with a closed bottom, we will not address the absence of lasting or sufficiency of the shaping imparted by the molded plastic stiffeners at the heel and front vamp. In pertinent part, Explanatory Note VII to GRI 2(a) states:

For the purposes of this Rule, "articles presented unassembled or disassembled" means articles the components of which are to be assembled either by means of fixing devices (screws, nuts, bolts, etc.) or by riveting or welding, for example, provided only assembly operations are involved.

No account is to be taken in that regard of the complexity of the assembly method. However, **the components shall not be subjected to any further working operation for completion into the finished state.** [Emphasis added.]

In this case, the sock liner is not the component that will be assembled to the upper, nor will it cover the opening to form a closed bottom. The sock liner is eventually inserted into the boot and its bottom layer is glued to the top of the insole. The insole is not present at importation, and the insole and upper are subjected to further working operations in order to complete the article into its finished state. Such working operations are not permitted if GRI 2(a) is to apply. We thus find that the two unassembled components, as entered, do not possess the essential character of a complete or finished "formed upper." GRI 2(a) is inapplicable to the imported components and they must be separately classified.

The sock liner is composed of four distinct materials in three layers, i.e., paperboard (which provides a stable base for attachment to the insole), rubber/plastic (for cushioned comfort), and leather and nonwoven textile

(also for comfort), none of which predominates in importance for determining essential character. (See NY 885769, dated May 6, 1993.) The sock liner is therefore classified pursuant to GRI 3(c), according to the material provided for in the provision which occurs last in numerical order, i.e., subheading 6406.99.90, HTSUSA, the provision for "Parts of footwear . . . removable insoles, heel cushions and similar articles . . . and parts thereof: Other: Of other materials: Other." The leather boot upper is classified in subheading 6406.10.65, HTSUSA, the provision for "Parts of footwear (including uppers whether or not attached to soles other than outer soles) . . . : Uppers and parts thereof, other than stiffeners: Other: Of leather."

**HOLDING:**

NY J82823, dated April 7, 2003, is hereby revoked.

The leather boot upper is classified in subheading 6406.10.65, HTSUSA, the provision for "Parts of footwear (including uppers whether or not attached to soles other than outer soles) . . . : Uppers and parts thereof, other than stiffeners: Other: Of leather." The general column one duty rate is free.

The sock liner is classified in subheading 6406.99.90, HTSUSA, the provision for "Parts of footwear . . . removable insoles, heel cushions and similar articles . . . : Other: Of other materials: Other." The general column one duty rate is free.

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

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

**MODIFICATION OF A RULING LETTER AND REVOCATION OF  
TREATMENT RELATING TO TARIFF CLASSIFICATION OF  
SWIMWEAR WITH FOAM INSERTS**

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

**ACTION:** Notice of modification of a tariff classification ruling letter and revocation of treatment relating to the classification of swimwear with foam inserts.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) is modifying one ruling relating to tariff classification of swimwear under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed modification was published on July 16, 2003, Vol. 37, No. 29, of the CUSTOMS BULLETIN. Three comments were received.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 28, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kelly Herman, Textiles Branch: (202) 572-8713.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, a notice proposing to modify New York Ruling Letter (NY) I87533, dated November 5, 2002, and revoke NY J81177, dated February 24, 2003, NY H89257, dated April 9, 2002, and NY I80416, dated April 19, 2002 was published in the July 16, 2003 CUSTOMS BULLETIN, Volume 37, No. 29. Three comments were received in response to this notice. One comment presented arguments which were considered and addressed prior to the proposed notice and will not be addressed again in this document. The remaining two comments requested confirmation of the appropriate classification of items with non-removable flotation padding in subheading 6307.90.9889, HTSUS, as stated in NY J82273, dated March 27, 2003. As a result of these comments we have reexamined our files and determined that we had mistakenly understood the articles described in NY J81177, NY H89257, and NY I80416 to have removable foam inserts. Consequently, we have abandoned our proposed revocation of NY J81177, NY H89257, and NY I80416.

As stated in the proposed notice, the modification will cover any rulings on this merchandise that may exist but have not been specifically identified. 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 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, Customs is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved in substantially identical transactions should have advised CBP during the 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 I87533, CBP classified swimwear with removable foam inserts in subheading 6307.90.9889, HTSUSA, as "other made-up articles". Upon reviewing this ruling, CBP has determined that the cited ruling is in error. Rather, CBP finds that swimwear with removable inserts is properly classified in subheadings 6112.41.0020 and 6112.31.0020, HTSUSA, as "Track suits, ski-suits and swimwear, knitted or crocheted: Women's or girls' swimwear: Of synthetic fibers, Other: Girls'" and "Track suits, ski-suits and swimwear, knitted or crocheted: Men's or boys' swimwear: Of synthetic fibers: Boys'." Accordingly, we are modifying NY I87533, to reflect the proper classification as set forth in the analysis of HQ 966391 (see "Attachment" to this document).

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY I87533 and any other ruling not specifically identified, to reflect the proper classification of swimwear with removable inserts according to the analysis contained in Headquarters Ruling Letter (HQ) 966391. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise.

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

**DATED:** October 7, 2003

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 966391  
October 7, 2003  
CLA-2 RR:CR:TE 966391 KSH  
TARIFF NO.: 6112.41.0040, 6112.31.0020

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

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

DEAR MS. SHIRA:

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

Pursuant to section 625(c), Tariff Act of 1930, as amended by section 623 of Title VI (Customs Modernization) of the North America Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993) notice of the proposed modification of NY I87533 was published on July 16, 2003, Vol. 37, No. 29, of the Customs Bulletin. Three comments were received in response to this notice. Your comment presented arguments which were considered and addressed prior to the proposed notice and will not be addressed again in this document. The remaining two comments requested confirmation of the appropriate classification of items with non-removable flotation padding in subheading 6307.90.9889, HTSUS, as stated in NY J82273, dated March 27, 2003. As a result of these two comments we have reexamined our files and determined that we had mistakenly understood the articles described in NY J81177, NY H89257, and NY I80416 to have removable foam inserts. Consequently, we have abandoned our proposed revocation of NY J81177, NY H89257, and NY I80416.

FACTS:

The merchandise at issue consists of a boys' float suit, style number 7530038 and a girls' float suit, style number 7530040. The boys' and girls'

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

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

ISSUE:

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

LAW AND ANALYSIS:

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

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

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

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

However, whether an article is to be considered wearing apparel depends on its use. See Admiral Craft Equipment Corp. v. United States, 82 Cust. Ct.

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

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

**HOLDING:**

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

The float suits are properly classified in subheading 6112.41.0040 and 6112.31.0020, HTSUSA, which provide, respectively, for "Track suits, ski-suits and swimwear, knitted or crocheted: Women's or girls' swimwear: Of synthetic fibers, Other: Girls'" and "Track suits, ski-suits and swimwear, knitted or crocheted: Men's or boys' swimwear: Of synthetic fibers: Boys.'" The general column one duty rates are 25.1 percent and 26.1 percent, ad valorem, respectively. The textile category is 659.

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

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

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

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