

Bureau of Customs and Border Protection

General Notices

Notice of a Decision of the United States Court of Appeals for the Federal Circuit Reversing the Decision of the Court of International Trade to Sustain a Domestic Party Petition Concerning the Classification of Textile Costumes

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

ACTION: Notice of the decision of the United States Court of Appeals for the Federal Circuit in the matter of Rubie's Costume Company v. United States, Appeal No. 02-1373 (decided August 1, 2003), reversing the decision of the Court of International Trade which sustained a domestic party petition seeking classification of textile costumes as wearing apparel of Chapters 61 or 62 of the Harmonized Tariff Schedule of the United States (HTSUS).

SUMMARY: On August 1, 2003, the United States Court of Appeals for the Federal Circuit (CAFC) issued its decision in the matter of Rubie's Costume Company v. United States, Appeal No. 02-1373, reversing the Court of International Trade (CIT) in Rubie's Costume Company v. United States, 196 F. Supp 2d 1320 (Ct. Int'l Trade 2002). The CIT had ruled that the textile costumes before it were "fancy dress" of textile and therefore classifiable as wearing apparel of Chapter 61, HTSUS. In reversing the CIT, the CAFC upheld the earlier classification determination of Customs and Border Protection (CBP), which classified textile costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel, as "festive articles" of Chapter 95, HTSUS. This document provides notice of the CAFC decision and informs the public that imported textile costumes, which CBP determines to be of a flimsy nature and construction, lacking in durability and generally recognized as not being normal articles of wearing apparel, are to be classified and assessed duty in accordance with the CAFC decision as "festive articles" of Chapter 95, HTSUS.

EFFECTIVE DATE: CBP began liquidating suspended entries and classifying incoming entries of merchandise in accord with the deci-

sion in the matter of Rubie's Costume Company v. United States as of October 31, 2003.

FOR FURTHER INFORMATION CONTACT: For questions regarding operational issues, contact Janet Labuda, Textile Enforcement and Operations Division, Office of Field Operations, 202-927-0414; for legal questions, contact Rebecca Hollaway, Textiles Branch, Office of Regulations and Rulings, 202-572-8814.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 2002, the Court of International Trade (CIT) issued a decision in Rubie's Costume Company v. United States, 196 F. Supp 2d 1320 (Ct. Int'l Trade 2002), in which the court ruled that certain imported textile costumes before it were classifiable as wearing apparel of Chapter 61 of the Harmonized Tariff Schedule of the United States (HTSUS). The decision sustained the position of a domestic interested party under the provisions of section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516). Pursuant to 19 U.S.C. 1516(f) and 19 C.F.R. 175.31, CBP published notice of the court's decision in the Federal Register, 67 FR 9504, on March 1, 2002, and notified the public that, effective the day after publication of the notice in the Federal Register, CBP would classify merchandise of the character of the merchandise at issue, which was entered for consumption or withdrawn from warehouse for consumption, in accordance with the court's decision. See "Notice of Decision of the United States Court of International Trade Sustaining Domestic Interested Party Petition Concerning Classification of Textile Costumes," 67 FR 9504 (March 1, 2002) for detailed background of the domestic interested party petition.

On August 1, 2003, the Court of Appeals for the Federal Circuit (CAFC) reversed the decision of the CIT. The court held that the CBP classification ruling on the textile costumes at issue is persuasive and must be granted deference under Skidmore v. Swift & Co., 323 U.S. 134 (1944). The court concluded that "textile costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel, are classifiable as 'festive articles.'" The court reversed the decision of the CIT holding the merchandise at issue to be classifiable as "wearing apparel." (The court's decision may be viewed on the court's web site at ww.fedcir.gov).

Under 19 CFR 175.31, CBP is not required to publish notice to the public of a decision of the CAFC reversing a cause of action before the CIT under the provisions of section 516, Tariff Act of 1930, as amended (19 CFR 1516). However, due to the length of the controversy of the classification of textile costumes and the significant interest in this issue, CBP believes notice to the public of the reversal

of this decision of the CIT is warranted. CBP will take no action on entries subject to this case until the appeal period has run. See 19 CFR 176.31(b).

Dated: November 7, 2003

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

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

Washington, DC, November 12, 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.

Sandra L. Bell for MICHAEL T. SCHMITZ,
*Assistant Commissioner,
Office of Regulations and Rulings.*

19 C.F.R. PART 177

**REVOCAION OF RULING LETTER AND REVOCAION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION OF AN
ANALOG WRIST WATCH**

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

ACTION: Notice of revocation of ruling letter and revocation of treatment relating to tariff classification of an analog wrist watch.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of an analog wrist watch, and revoking any treatment previously accorded by Customs to substantially identical transactions. No comments were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 25, 2004.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (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 I88952 dated December 16, 2002, pertaining to the tariff classification of an analog wrist watch. No comments were 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 NY I88952, dated December 16, 2002, Customs found that an analog wrist watch was classified in subheading 9102.19.40, HTSUS, as: "Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101: Wrist watches, electrically operated, whether or not incorporating a stop watch facility: Other: Having no jewels or only one jewel in the movement: Other."

Customs has reviewed the matter and determined that the correct classification of the analog wrist watch is in subheading 9102.11.45, HTSUS, which provides for: "Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101: Wrist watches, electrically operated, whether or not incorporating a stop watch facility: With mechanical display only: Having no jewels or only one jewel in the movement: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY I88952, as well as 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) 966206, 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 966206**

September 11, 2003

CLA-2 RR:CR:GC 966206 KBR**CATEGORY: Classification****TARIFF NO.: 9102.11.45**

MS. CHRISTY MILLER
CUSTOMS SPECIALIST
NIKE, INC.
One Bowerman Drive
Beaverton, OR 97005-6453

RE: NY I88952 Revoked; Analog Wrist Watch

DEAR MS. MILLER:

This is in reference to New York Ruling Letter (NY) I88952, issued to you on December 16, 2002, concerning Protest 3801-98-102222. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of the Presto Cee analog wrist watch. We have reviewed NY I88952 and determined that the classification provided for the analog wrist watch is incorrect. This ruling sets forth the correct classification.

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 NY I88952. No comments were received in response to this notice.

FACTS:

NY I88952 concerned Style WT0009, the Presto Cee Analog, a women's battery operated quartz analog wrist watch in a plastic case. There are no jewels in the movement. The watch has a plastic watch band with ventilated wrist grips and is water resistant to 30 meters. The analog wrist watch features a white dial with silver-tone hour, minute and second hands.

In NY I88952, it was determined that the analog wrist watch was classified in subheading 9102.19.40, HTSUS, as: "Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101: Wrist watches, electrically operated, whether or not incorporating a stop watch facility: Other: Having no jewels or only one jewel in the movement: Other." We have reviewed that ruling and determined that the classification is incorrect. This ruling sets forth the correct classification.

ISSUE:

Whether the analog wrist watch is classified as "with mechanical display only" under subheading 9102.11, HTSUS.

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.

The HTSUS provisions under consideration are as follows:

- 9102 Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101:
- Wrist watches, electrically operated, whether or not incorporating a stop watch facility:
- 9102.11 With mechanical display only:
- Having no jewels or only one jewel in the movement:
- Other:
- 9102.11.45 Other
- 9102.19 Other:
- Having no jewels or only one jewel in the movement:
- 9102.19.40 Other

The article at issue is a battery powered, quartz analog wrist watch. To determine the time of day, the user looks at a traditional watch face—a dial with hands. This is in contrast to a digital watch where the time of day is displayed numerically, typically with a LCD or LED display.

The article's dial and hands display is called a "mechanical display." The HTSUS specifically provides for a watch which has only a mechanical display in subheading 9102.11, HTSUS. *See* HQ 086562 (June 12, 1990), NY H86759 (January 25, 2002), and NY H80178 (May 9, 2001). The HTSUS treats a wrist watch with a mechanical display differently than a wrist watch with a digital display, the latter being classified in subheading 9102.19, HTSUS. *See* NY C88974 (July 7, 1998) and NY C81810 (December 17, 1997).

Therefore, since the instant Presto Cee analog wrist watch has a dial and hands display, it is classified as a wrist watch with a mechanical display only in subheading 9102.11.45, HTSUS.

HOLDING:

The Presto Cee analog wrist watch is classified under subheading 9102.11.45, HTSUS, as: "Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101: Wrist watches, electrically operated, whether or not incorporating a stop watch facility: With mechanical display only: Having no jewels or only one jewel in the movement: Other: Other."

EFFECT ON OTHER RULINGS:

NY I88952 dated December 16, 2002, is REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after publication in the *Customs Bulletin*.

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