

Bureau of Customs and Border Protection

General Notices

RECEIPT OF AN APPLICATION FOR “LEVER-RULE” PROTECTION

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

ACTION: Notice of receipt of application for “Lever-rule” protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that Customs and Border protection (CBP) has received an application from Johnson & Johnson, a New Jersey Corporation seeking “Lever-rule” protection for two trademarks.

FOR FURTHER INFORMATION CONTACT: Joseph E. Howard, Esq., Intellectual Property Rights Branch, Office of Regulations & Rulings, (202) 572-8701.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that CBP has received an application from Johnson & Johnson, a New Jersey corporation seeking “Lever-rule” protection for two trademarks. The first trademark for which “Lever-rule” protection is requested seeks against importations of the following product intended for sale in Canada:

Johnson & Johnson blood glucose monitoring apparatus which bears the following trademark: “FASTTAKE” (U.S. Patent and Trademark Office Registration No. 2,166,495; CBP Recordation No. TMK 03-00073).

The second trademark for which “Lever-rule” protection is requested seeks protection against importations of the following product intended for sale in Canada, Europe, The United Kingdom, and Ireland:

Johnson & Johnson blood glucose monitoring devices, parts, and accessories therefor which bear the following trademark:

“ONE TOUCH ULTRA” U.S. Patent & Trademark Office Registration No. 2,538,658; CBP Recordation No. TMK 03-00074

Pursuant to 19 CFR 133.2(f), CBP will publish an additional notice in the Customs Bulletin indicating whether the trademarks will receive “Lever-rule” protection relevant to the specific products if CBP determines that the subject is physically and materially different from the product authorized for sale in the United States.

Dated: November 25, 2003

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

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

Washington, DC, November 26, 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,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED REVOCATION AND MODIFICATION OF RULING
LETTERS AND REVOCATION OF TREATMENT RELATING TO
TARIFF CLASSIFICATION OF MEN'S SWIMWEAR

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and modification of one ruling letter and revocation of any treatment relating to the classification of certain men's garments.

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 (CBP) intends to revoke one ruling letter, New York Ruling Letter (NY) 184258, and to modify one ruling letter New York Ruling Letter (NY) I80536, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of certain men's garments. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before January 9, 2004.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the U.S. Customs and Border Protection, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted

comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Shirley Greitzer, Textiles Branch: (202) 572-8823.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CCP intends to revoke one ruling letter and modify one ruling relating to the tariff classification of certain men's garments. Although in this notice CBP is specifically referring to the revocation of New York decision (NY) I84257, dated July 26, 2002, (attachment A), and the modification of New York decision (NY) I80536, dated April 23, 2002, (attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to sub-

stantially 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 previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY I84257, CBP classified a men's garment under subheading 6203.43.4030, HTSUSA, which provides for, among other things, men's shorts. CBP has reviewed the classification of the garment and has determined that the proper classification of the garment is under subheading 6211.11.1010, HTSUSA, the provision for men's swimwear of man-made fibers.

In NY I80536, CBP classified a men's garment under subheading 6203.43.4030, HTSUSA, which provides for, among other things, men's shorts. Customs has reviewed the classification of the garment and has determined that the proper classification of the garment is under subheading 6211.11.1010, HTSUSA, the provision for men's swimwear of man-made fibers.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY I84257, and modify NY I80536. CBP also intends to revoke or modify any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letters (HQ) 966760 (attachment C) and HQ 966759 (attachment D). 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: November 25, 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 I84257
July 26, 2002
CLA-2-62:RR:NC:WA:355 I84257
CATEGORY: Classification
TARIFF NO.: 6203.43.4030

MS. LORI J. PENDER
COLUMBIA SPORTSWEAR COMPANY
14375 NW Science Park Drive
Portland, OR 97229

RE: The tariff classification of men's shorts from India

DEAR MS. PENDER:

In your letter dated June 19, 2002, you requested a classification ruling. A sample of a men's short was submitted, identified as style TM4036. The garment will be returned as you have requested. The garment, made of 100 percent nylon woven fabric with an inner lining of 100 percent polyester knit mesh fabric, features an elasticized waistband, five belt loops, two side slash pockets with mesh pocket fabric, a back pocket which closes by means of hook and loop fabric, a side seam zippered cargo pocket which has two extremely tiny drain holes and a rubberized drawcord which extends through the entire length of the waistband. The garment is designed so that it can be folded and stored within the back mesh pocket. It forms its own carrying pouch.

The applicable subheading for style TM4036 will be 6203.43.4030, Harmonized Tariff Schedule of the United States (HTS), which provides for men's or boys' trousers, bib and brace overalls, breeches and shorts, of synthetic fibers, other, other, other, other, shorts, men's. The duty rate will be 28.3 percent ad valorem.

Style TM4036 falls within textile category designation 647. Based upon international textile trade agreements products of India are subject to quota and the requirement of a visa.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Camille R. Ferraro at 646-733-3046.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY I80536
April 23, 2002
CLA-2-62:RR:NC:WA:355 I80536
CATEGORY: Classification
TARIFF NO.: 6203.43.4030; 6211.11.8010

MS. LINDA MOYER
ASSOCIATED MERCHANDISING CORPORATION
500 Seventh Avenue
New York, NY 10018

RE: The tariff classification of men's shorts and swim shorts from Bangladesh and Sri Lanka

DEAR MS. MOYER:

In your letter dated April 15, 2002, you requested a classification ruling. You submitted two garments identified as styles S3S-A1 and S3S-A2. Style S3S-A1 is made of 100 percent woven nylon fabric. It features an elasticized waistband, an elastic cord with a barrel clasp running the entire length of the waistband whose function mimics that of the elastic of the waistband, two side seam pockets with mesh pocket lining fabric, and a side seam cargo pocket with a flap, a hook and loop fabric closure and grommets for drainage. The pull on shorts also has an interior knit mesh liner. You state that this garment is made in Sri Lanka.

Style S3S-A2 is made of 70 percent cotton and 30 percent nylon woven fabric. The garment features an fully elasticized waistband with an interior drawcord which runs the entire length of the waistband, a back patch pocket and a patch pocket over the side seam, both of which have flaps, hook and loop fabric for closure and two grommets in each pocket for drainage. The garment also features a knit mesh liner. You state that this garment is made in Bangladesh. Your samples will be returned as you have requested.

The applicable subheading for style S3S-A1 will be 6203.43.4030, Harmonized Tariff Schedule of the United States (HTS), which provides for men's or boys' trousers, bib and brace overalls, breeches and shorts, of synthetic fibers, other, other, other, other, shorts, men's. The duty rate will be 28.3 percent ad valorem.

The applicable subheading for style S3S-A2 will be 6211.11.8010, Harmonized Tariff Schedule of the United States (HTS), which provides for track suits, ski-suits and swimwear, other garments, swimwear, men's or boys', other, of cotton, men's. The duty rate will be 7.6 percent ad valorem.

Style S3S-A1 falls within textile category designation 647. Based upon international textile trade agreements products of Sri Lanka are subject to quota and the requirement of a visa. Style S3S-A2 falls within textile category designation 359. Based upon international textile trade agreements products of Bangladesh are not subject to quota, but do require a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Ser-

vice, 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 Camille R. Ferraro at 646-733-3046.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966760
CLA-2 RR:TC:TE 966760 SG
CATEGORY: Classification
TARIFF NO.: 6211.11.1010

MS. LORI J. PENDER
COLUMBIA SPORTSWEAR COMPANY
14375 NW Science Park Drive
Portland, Oregon 97229

RE: Revocation of New York Ruling (NY) I84257, dated July 26, 2002; Men's woven swimwear

DEAR MS. PENDER:

This is in reference to New York ruling letter (NY) I84257, issued to you on July 26, 2002, regarding the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a pair of men's shorts. We have reconsidered NY I84257 and found it to be in error.

In NY I84257, we found that a garment identified as style TM4036 was classified in subheading 6203.43.4030, HTSUSA, as men's shorts. We have reviewed the matter and believe that the correct classification of the garment is in subheading 6211.11.1010, HTSUSA, as men's swimwear. Therefore, this ruling revokes NY I84257.

FACTS:

The garment involved is a pair of men's shorts made of 100 percent woven nylon fabric with an inner lining of 100 percent polyester knit mesh fabric. It features an elasticized waistband, five belt loops, a rubberized draw cord extending through the entire length of the waistband, two side slash pockets with mesh pocket fabric, a back pocket which closes by means of a hook and loop fabric, and a side seam zippered cargo pocket with two small drainage holes.

ISSUE:

Whether style TM4036 is properly classified as men's swimwear, heading 6211, HTSUS, or men's shorts, heading 6203, HTSUS?

LAW AND ANALYSIS:

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

In *Hampco Apparel, Inc. v. United States*, 12 CIT 92 (1988), the Court of International Trade stated that three factors must be present if a garment is to be considered swimwear for tariff purposes:

- (1) the garment has an elasticized waistband through which a drawstring is threaded,
- (2) the garment has an inner lining of lightweight material, namely nylon tricot, and
- (3) the garment is designed and constructed for swimming.

Beyond possessing the listed criteria, the court determined that the garment at issue therein was designed, manufactured, marketed and intended to be used as swimwear. The court therefore concluded that the garment before it was properly classified as swimwear.

Although the *Hampco* decision involved classification of swimwear under the previous tariff schedule, i.e., the Tariff Schedules of the United States, it is relevant to decisions under the HTSUSA as the tariff language at issue is the same and the current tariff does not offer any new or different guidance regarding the distinction between swimwear and shorts.

The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories, CIE 13/88, November 23, 1988, also provide guidance in classifying garments as either men's shorts or swimwear. The Guidelines state:

Garments commercially known as jogging or athletic shorts are normally loose-fitting short pants usually extending from the waist to the upper thigh and usually have an elastic waistband. They may resemble swim trunks for men, boys, or male infants, which are not included in this category.

Swim trunks will usually have an elasticized waist with a drawstring and a full lightweight support liner. Garments which cannot be recognized as swim trunks will be considered shorts.

In an informed compliance publication, "Apparel Terminology under the HTSUS," dated November, 2000, Customs and Border Protection (CBP) provided basic definitions of textile terms which are commonly utilized in the HTSUS and by the trade community. These definitions are not intended to be definitive but rather to provide a basic guideline for classification purposes. In the informed compliance publication, shorts and swimwear are defined as:

Shorts (6103, 6104, 6203, 6204) - are trousers which do not cover the knee or below.

Swimwear (6112, 6211) - is a term referring to garments designed for swimming. Included in this term are swim trunks, which usually have an elasticized waist with a drawstring threaded through it, and a full lightweight support liner. Garments that cannot be identified specifically as swim trunks will be considered shorts. Multiple-use "sports" or "athletic" shorts that bear a close resemblance to swim trunks and are designed for running, team sports etc. are not considered swimwear.

* * * *

See, U.S. Customs Service, What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS, 34 Cust. B. & Dec. 52, 153 (Dec. 27, 2000).

In Headquarters Ruling Letter (HQ) 081477, dated March 21, 1988, we stated that in order to determine whether a garment is designed and constructed for swimming, we will first look at the appearance of the garment. If the appearance is inconclusive, the following evidence will be considered: the way in which the garment has been designed, manufactured, marketed or advertised; the way in which the manufacturer or importer intends the garment to be used, and the way in which a garment is chiefly used. (We note that under the HTS "principal use" replaced "chief use".) See HQ 952751, dated January 12, 1993; HQ 952209, dated October 2, 1992; HQ 951841, dated August 11, 1992; and HQ 950501, dated December 17, 1991. As such, Customs analysis is in fact, a two part test, that is, (a) examination of the physical attributes of the garment (three Hampco features); and (b) where ALL three features are not present or not conclusive, we then look to the design, manufacture, marketing or advertising; intended use of the garment and principal use of the garment for guidance.

Style TM4036 has a mesh inner liner, it therefore meets the Hampco criteria that it has an inner lining of lightweight material.

In the case of style TM4036, it has a fully elasticized waistband. We note that although there is no requirement that the entire waistband be elasticized (HQ 087264, dated June 13, 1990 and HQ 965981, dated March 3, 2003), it is our view that at least 1/2 of the waistband must be elasticized.

We must then ascertain whether the garment has a "drawstring threaded through the elasticized waistband". Without a functioning drawstring, the garment does not satisfy the Hampco test. The American Heritage Dictionary of the English Language, New College Edition, published by Houghton Mifflin Company, 1976 edition, at page 397, defines a drawstring as "A cord or ribbon run through a hem or casing and pulled to tighten or close an opening." Nothing in the definition precludes the cord or ribbon from being made of rubber or elastic, so long as it serves to tighten the entire span of the waistband, that the tightening provided by the cord is not minimal, and thus serves the function of a drawstring. In our view the rubberized cord does all of these things. The waistband construction is adapted for swimming; the tightening provided by the rubberized draw cord is not minimal and serves the function of a drawstring, which is to adjust the size of the waistband. Accordingly, style TM4036, which has a rubberized drawcord threaded through the waistband, meets the criteria of having a functional drawstring threaded through the elasticized waistband.

CBP has been consistent in ruling that even in those instances where the first two factors enumerated by the court in Hampco are present, the third factor (the garment is designed and constructed for swimming) must still be present. Where the third factor is lacking, the article will be considered

shorts (See also, HQ 086436, dated May 3, 1990; HQ 086979, dated May 15, 1990; HQ 087476, dated September 7, 1990; HQ 950207, dated December 3, 1991 and HQ 950652, dated February 12, 1992).

The garment is made of a woven nylon outer shell fabric and possesses a mesh liner. The fabrics used to construct this article are relatively light-weight, quick drying, and will not retain an inordinate amount of water. The pockets have been constructed to facilitate drainage. These features indicate that this garment has been designed principally for swimming and thus qualifies as men's swimwear in heading 6211, HTSUS. The presence of pockets and belt loops does not preclude classification as a swimsuit. See, HQ 087357, dated June 25, 1990.

HOLDING:

The garment, style number TM4036, meets the Hampco criteria for classification as swimwear. It is properly classified in subheading 6211.11.1010, HTSUSA, the provision for "Track suits, ski-suits and swimwear; other garments: Swimwear: Men's or boys': Of man-made fibers: Men's", textile category 659, dutiable at the column one rate of 28 percent ad valorem.

NY I84257, dated July 26, 2002, is **REVOKED**.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966759
CLA-2 RR:TC:TE 966759 SG
CATEGORY: Classification
TARIFF NO.: 6211.11.1010

MS. LINDA MOYER
ASSOCIATED MERCHANDISING CORPORATION
500 Seventh Avenue
New York, NY 10018

RE: Modification of New York Ruling (NY) I80536, dated April 23, 2002;
Men's Woven Swimwear, Heading 6211, HTSUS; Shorts, Heading 6203,
HTSUS

DEAR MS. MOYER:

This is in reference to New York ruling letter (NY) I80536, issued to you on April 23, 2002, regarding the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of two pairs of men's shorts. We have reconsidered NY I80536 and found it to be partially in error.

In NY I80536, we found that a garment identified as style S3S-A1 was classified in subheading 6203.43.4030, HTSUSA, as men's shorts. We have reviewed the matter and believe that the correct classification of the garment is in subheading 6211.11.1010, HTSUSA, as men's swimwear. Therefore, this ruling modifies NY I80536.

FACTS:

The garment involved, style S3S-A1, is a pair of men's shorts made of 100 percent woven nylon fabric with an inner lining of knit mesh fabric. It features as elasticized waistband with an elastic cord with a barrel clasp running through the entire length of the waistband, two side slash pocks with mesh pocket lining, a side seam cargo pocket with a flap which closes by means of a hook and loop fabric, and grommets for drainage.

ISSUE:

Whether style S3S-A1 is properly classified as men's swimwear, heading 6211, HTSUS, or men's shorts, heading 6203, HTSUS?

LAW AND ANALYSIS:

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

In Hampco Apparel, Inc. v. United States, 12 CIT 92 (1988), the Court of International Trade stated that three factors must be present if a garment is to be considered swimwear for tariff purposes:

- (1) the garment has an elasticized waistband through which a drawstring is threaded,
- (2) the garment has an inner lining of lightweight material, namely nylon tricot, and
- (3) the garment is designed and constructed for swimming.

Beyond possessing the listed criteria, the court determined that the garment at issue therein was designed, manufactured, marketed and intended to be used as swimwear. The court therefore concluded that the garment before it was properly classified as swimwear.

Although the Hampco decision involved classification of swimwear under the previous tariff schedule, i.e., the Tariff Schedules of the United States, it is relevant to decisions under the HTSUSA as the tariff language at issue is the same and the current tariff does not offer any new or different guidance regarding the distinction between swimwear and shorts.

The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories, CIE 13/88, November 23, 1988, also provide guidance in classifying garments as either men's shorts or swimwear. The Guidelines state:

Garments commercially known as jogging or athletic shorts are normally loose-fitting short pants usually extending from the waist to the upper thigh and usually have an elastic waistband. They may resemble swim trunks for men, boys, or male infants, which are not included in this category.

Swim trunks will usually have an elasticized waist with a drawstring and a full lightweight support liner. Garments which cannot be recognized as swim trunks will be considered shorts.

In an informed compliance publication, "Apparel Terminology under the HTSUS," dated November, 2000, Customs and Border Protection (CBP) provided basic definitions of textile terms which are commonly utilized in the

HTSUS and by the trade community. These definitions are not intended to be definitive but rather to provide a basic guideline for classification purposes. In the informed compliance publication, shorts and swimwear are defined as:

Shorts (6103, 6104, 6203, 6204) - are trousers which do not cover the knee or below.

Swimwear (6112, 6211) - is a term referring to garments designed for swimming. Included in this term are swim trunks, which usually have an elasticized waist with a drawstring threaded through it, and a full lightweight support liner. Garments that cannot be identified specifically as swim trunks will be considered shorts. Multiple-use "sports" or "athletic" shorts that bear a close resemblance to swim trunks and are designed for running, team sports etc. are not considered swimwear.

* * * *

See, U.S. Customs Service, What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS, 34 Cust. B. & Dec. 52, 153 (Dec. 27, 2000).

In Headquarters Ruling Letter (HQ) 081477, dated March 21, 1988, we stated that in order to determine whether a garment is designed and constructed for swimming, we will first look at the appearance of the garment. If the appearance is inconclusive, the following evidence will be considered: the way in which the garment has been designed, manufactured, marketed or advertised; the way in which the manufacturer or importer intends the garment to be used, and the way in which a garment is chiefly used. (We note that under the HTS "principal use" replaced "chief use".) See HQ 952751, dated January 12, 1993; HQ 952209, dated October 2, 1992; HQ 951841, dated August 11, 1992; and HQ 950501, dated December 17, 1991. As such, Customs analysis is in fact, a two part test, that is, (a) examination of the physical attributes of the garment (three Hampco features); and (b) where ALL three features are not present or not conclusive, we then look to the design, manufacture, marketing or advertising; intended use of the garment and principal use of the garment for guidance.

Style S3S-A1 has a mesh inner liner, it therefore meets the Hampco criteria that it has an inner lining of lightweight material.

In the case of style S3S-A1, it has a fully elasticized waistband. We note that although there is no requirement that the entire waistband be elasticized (HQ 087264, dated June 13, 1990 and HQ 965981, dated March 3, 2003), it is our view that at least 1/2 of the waistband must be elasticized.

We must then ascertain whether the garment has a "drawstring threaded through the elasticized waistband". Without a functioning drawstring, the garment does not satisfy the Hampco test. The American Heritage Dictionary of the English Language, New College Edition, published by Houghton Mifflin Company, 1976 edition, at page 397, defines a drawstring as "A cord or ribbon run through a hem or casing and pulled to tighten or close an opening." Nothing in the definition precludes the cord or ribbon from being made of rubber or elastic, so long as it serves to tighten the entire span of the waistband, that the tightening provided by the cord is not minimal, and thus serves the function of a drawstring. In our view the elastic cord does all of these things, while the barrel clasp holds the tightening in place. The waistband construction is adapted for swimming; the tightening provided by the elastic cord and barrel clasp is not minimal and serves the function of a

drawstring, which is to adjust the size of the waistband. Accordingly, style S3S-A1, which has a elastic cord with barrel clasp threaded through the waistband, meets the criteria of having a functional drawstring threaded through the elasticized waistband.

CBP has been consistent in ruling that even in those instances where the first two factors enumerated by the court in Hampco are present, the third factor (the garment is designed and constructed for swimming) must still be present. Where the third factor is lacking, the article will be considered shorts (See also, HQ 086436, dated May 3, 1990; HQ 086979, dated May 15, 1990; HQ 087476, dated September 7, 1990; HQ 950207, dated December 3, 1991 and HQ 950652, dated February 12, 1992).

The garment is made of a woven nylon outer shell fabric and possesses a mesh liner. The fabrics used to construct this article are relatively light-weight, quick drying, and will not retain an inordinate amount of water. The pockets have been constructed to facilitate drainage. These features indicate that this garment has been designed principally for swimming and thus qualifies as men's swimwear in heading 6211, HTSUS.

HOLDING:

The garment, style number S3S-A1, meets the Hampco criteria for classification as swimwear. It is properly classified in subheading 6211.11.1010, HTSUSA, the provision for "Track suits, ski-suits and swimwear; other garments: Swimwear: Men's or boys': Of man-made fibers: Men's", textile category 659, dutiable at the column one rate of 28 percent ad valorem.

NY I80536, dated April 23, 2002, is **MODIFIED**.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF DISPOSABLE BOXER SHORTS

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

ACTION: Notice of proposed revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of disposable boxer shorts.

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 two ruling letters relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of disposable boxer shorts. Similarly, CBP proposes to revoke any treatment previously

accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before January 9, 2004.

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 inspected at Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Beth Safeer, Textiles Branch: (202) 572-8825.

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 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 two ruling letters relating to the tariff classification of disposable boxer shorts. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) H88064, dated March 1, 2002 (Attachment A), and NY H82855, dated July 6, 2001 (Attachment B), this notice

covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, 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, CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY H88064 and NY H82855, CBP classified disposable boxer shorts composed of 100 percent spun bond polypropylene fabric with an elasticized waistband under subheading 6210.10.7000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), 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: Disposable briefs and panties designed for one-time use." Based on our analysis of the scope of the terms of subheadings 6210.10.7000, HTSUSA, and 6210.10.9040, HTSUSA, the Legal Notes, and the Explanatory Notes, we find that disposable boxer shorts of the type subject to this notice, should be classified in subheading 6210.10.9040, HTSUSA, the provision 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."

Pursuant to 19 U.S.C. 1625 (c)(1), CBP intends to revoke NY H88064 and NY H82855, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 966595 (Attachment C) and HQ 966594 (Attachment D). 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: November 25, 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 H88064
March 1, 2002
CLA-2-61:RR:NC: 3 353 H88064
CATEGORY: Classification
TARIFF NO.: 6210.10.7000

MR. THOMAS CHAO
M.A.M. INDUSTRIES INC.
10736 Skylark Dr.
Jacksonville, FL 32257

RE: The tariff classification of disposable boxer shorts from China.

DEAR MR. CHAO:

In your letter dated January 15, 2002, received in this office on February 4, 2002, you requested a tariff classification ruling.

The submitted sample Item Number BX-002 Disposable Boxer is made for one-time use. The garment is composed of non-woven 100% spun bond polypropylene fabric. The boxer features an elasticized waistband.

The applicable subheading for the Item Number BX-002 Disposable Boxer will be 6210.10.7000, 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: Disposable briefs and panties designed for one-time use." The rate of duty will be 10.2% ad valorem.

There are no quota restrictions or visa requirements for this merchandise.

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,
NY H82855
July 6, 2001
CLA-2-62:RR:NC:3:353 H82855
CATEGORY: Classification
TARIFF NO.: 6210.10.7000

MR. DAVID HARRIS
DNA PRODUCTS, LLC
P.O. Box 306
New York, NY 10032

RE: The tariff classification of disposable boxer shorts from China.

DEAR MR. HARRIS:

In your letter dated June 6, 2001 you requested a tariff classification ruling.

The submitted sample is a disposable boxer short made for one-time use. The garment is composed of non-woven 100% polypropylene fabric. The boxer styled man's short has an elasticized waistband and a fly front opening.

The applicable subheading for the disposable boxer short will be 6210.10.7000, 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: Disposable briefs and panties designed for one-time use". The rate of duty will be 11% ad valorem.

There are no quota restrictions or visa requirements on this merchandise.

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

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

ROBERT B. SWIERUPSKI
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966595
CLA-2 RR:CR:TE 966595 BAS
CATEGORY: Classification
TARIFF NO.: 6210.10.9040

THOMAS CHAO
M.A.M. INDUSTRIES, INC.
10736 Skylark Drive
Jacksonville, Florida 32257

RE: Revocation of NY H88064, dated March 1, 2002; Classification of disposable boxer shorts

DEAR MR. CHAO:

This is in reference to New York Ruling Letter (NY) H88064, dated March 1, 2002. In NY H88064, disposable boxer shorts composed of 100 percent spun bond polypropylene fabric with an elasticized waistband were classified under subheading 6210.10.7000, Harmonized Tariff Schedule of the United States (HTSUSA), 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: Disposable briefs and panties designed for one-time use." Upon review of the ruling, the Bureau of Customs and Border Protection (CBP) has determined that the merchandise was erroneously classified. This ruling letter revokes NY H88064 and sets forth the correct classification determination.

FACTS:

The merchandise under consideration is a disposable boxer short from China made for one time use. The garment, Item Number BX-002, is composed of non-woven 100 percent spun bond polypropylene fabric and features an elasticized waistband.

Internet research reveals that disposable boxer shorts may be used for wear while travelling, camping, before or after workout, during hospital stays and spa visits.

ISSUE:

Is the subject disposable boxer short classifiable under subheading 6210.10.7000, HTSUSA, which provides for disposable briefs and panties designed for one-time use, made up of fabrics of 5603, or under subheading 6210.10.9040, HTSUSA, which provides for other garments, made up of fabrics of heading 5602 or 5603?

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 GRIs may then be applied.

SUBHEADING 6210.10.7000, HTSUSA

Heading 6210, HTSUSA, covers garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907. The boxer shorts at issue, constructed of 100 percent non-woven polypropylene fabric would be a garment made up of fabric of heading 5603, non-woven.

The issue is whether or not the boxer shorts should be classified under subheading 6210.10.7000, HTSUSA, as a disposable brief or panty, designed for one time use or under subheading 6210.10.9040, HTSUSA, as another garment made up of fabrics of heading 5602 or 5603.

Websters II New College Dictionary, 1999, at page 138, defines briefs as "short tight-fitting underpants" and boxer shorts as "full-cut undershorts."

The Fashion Dictionary, Mary Brooks Picken, 1973, at page 37, defines briefs as "undergarments similar to drawers but shorter, shaped with crotch, fitting legs snugly" and boxers as "styles of shorts first worn in the boxing ring, and then used as swimming trunks by men. Adapted for trunks of women's and children's bathing suits."

Hisroom.com, an internet website which sells undergarments of all types, describes a brief as "the traditional men's underpant. It has a full rise, meaning it covers the body from the waist to the top of the thigh. Also has a working fly." Hisroom.com describes a boxer as "a full rise, full cut short with a 3 inch inseam. It loosely covers the body from the waist to just above mid thigh. It always has a working front fly."

The definitions indicate that briefs are tighter fitting garments that do not cover the thigh. Boxers are loose fitting garments which do cover part of the thigh. Although the boxers in this case are disposable, they are not briefs and therefore are not properly classifiable in subheading 6210.10.7000, HTSUSA.

SUBHEADING 6210.10.9040, HTSUSA

The subject disposable boxer short is properly classified in subheading 6210.10.9040, HTSUSA, the provision 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."

This ruling is consistent with other rulings in which disposable non-woven polypropylene boxer shorts, disposable shorts and other non-woven polypropylene garments have been classified in subheading 6210.10.9040, HTSUSA. See NY J83528, dated April 30, 2003; NY F86301, dated May 11, 2000; NY B81958, dated March 31, 1997.

HOLDING

NY H88064, dated March 1, 2002, is hereby revoked.

The disposable boxer short at issue, Item Number BX-002, composed of non-woven 100 percent spun bond polypropylene fabric and featuring an elasticized waistband is classified in subheading 6210.10.9040, HTSUSA, textile category 659, the provision 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 general column one rate of duty is 16.1 percent ad valorem.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest your client

check, close to the time of shipment, the Textile Status Report for Absolute Quotas, previously available on the Customs Electronic Bulletin Board (CEBB), which is available now on the CBP website at www.cbp.gov.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966594
CLA-2 RR:CR:TE 966594 BAS
CATEGORY: Classification
TARIFF NO.: 6210.10.9040

DAVID HARRIS
DNA PRODUCTS, LLC
P.O. Box 306
New York, NY 10032

RE: Revocation of NY H82855, dated July 6, 2001; Classification of disposable boxer shorts

DEAR MR. HARRIS:

This is in reference to New York Ruling Letter (NY) H82855, dated July 6, 2001. In NY H82855, disposable boxer shorts composed of non-woven 100 percent polypropylene fabric with an elasticized waistband and a front fly opening were classified under subheading 6210.10.7000, Harmonized Tariff Schedule of the United States (HTSUSA), 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: Disposable briefs and panties designed for one-time use." Upon review of the ruling, the Bureau of Customs and Border Protection (CBP) has determined that the merchandise was erroneously classified. This ruling letter revokes NY H82855 and sets forth the correct classification determination.

FACTS:

The merchandise under consideration is a disposable boxer short from China made for one time use. The garment is composed of non-woven 100 percent polypropylene fabric and features an elasticized waistband and a front fly opening.

Internet research reveals that disposable boxer shorts may be used for wear while travelling, camping, before or after workout, during hospital stays and spa visits.

ISSUE:

Is the subject disposable boxer short classifiable under subheading 6210.10.7000, HTSUSA, which provides for disposable briefs and panties designed for one-time use, made up of fabrics of 5603, or under subheading 6210.10.9040, HTSUSA, which provides for other garments, made up of fabrics of heading 5602 or 5603?

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 GRIs may then be applied.

SUBHEADING 6210.10.7000, HTSUSA

Heading 6210, HTSUSA, covers garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907. The boxer shorts at issue, constructed of 100 percent non-woven polypropylene fabric would be a garment made up of fabric of heading 5603, non-woven.

The issue is whether or not the boxer shorts should be classified under subheading 6210.10.7000, HTSUSA, as a disposable brief or panty, designed for one time use or under subheading 6210.10.9040, HTSUSA, as an other garment made up of fabrics of heading 5602 or 5603.

Websters II New College Dictionary, 1999, at page 138, defines briefs as "short tight-fitting underpants" and boxer shorts as "full-cut undershorts."

The Fashion Dictionary, Mary Brooks Picken, 1973, at page 37, defines briefs as "undergarments similar to drawers but shorter, shaped with crotch, fitting legs snugly" and boxers as "styles of shorts first worn in the boxing ring, and then used as swimming trunks by men. Adapted for trunks of women's and children's bathing suits."

Hisroom.com, an internet website which sells undergarments of all types, describes a brief as "the traditional men's underpant. It has a full rise, meaning it covers the body from the waist to the top of the thigh. Also has a working fly." Hisroom.com describes a boxer as "a full rise, full cut short with a 3 inch inseam. It loosely covers the body from the waist to just above mid thigh. It always has a working front fly."

The definitions indicate that briefs are tighter fitting garments that do not cover the thigh. Boxers are loose fitting garments which do cover part of the thigh. Although the boxers in this case are disposable, they are not briefs and therefore are not properly classifiable in subheading 6210.10.7000, HTSUSA.

SUBHEADING 6210.10.9040, HTSUSA

The subject disposable boxer short is properly classified in subheading 6210.10.9040, HTSUSA, the provision 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."

This ruling is consistent with other rulings in which disposable non-woven polypropylene boxer shorts, disposable shorts and other non-woven polypropylene garments have been classified in subheading 6210.10.9040, HTSUSA. See NY J83528, dated April 30, 2003; NY F86301, dated May 11, 2000; NY B81958, dated March 31, 1997.

HOLDING

NY H82855, dated July 6, 2001, is hereby revoked.

The disposable boxer short at issue composed of non-woven 100 percent polypropylene fabric and featuring an elasticized waistband and front fly opening is classified in subheading 6210.10.9040, HTSUSA, textile category 659, the provision for "Garments, made up of fabrics of heading 5602, 5603, 5903, 5906 or 5907: Of fabrics of heading 5602 or 5603: Other: Other: Other." The general column one rate of duty is 16.1 percent ad valorem.

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

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF SEATS FOR FORK-LIFT TRUCKS

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 seats for fork-lift trucks.

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 seats for fork-lift trucks, and to revoke any treatment Customs has previously accorded to substantially identical transactions. These articles are seats designed to be attached to the floors of fork-lift trucks. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before January 9, 2004.

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 seats for fork-lift trucks. Although in this notice Customs is specifically referring to one ruling, HQ 954853, 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 HQ 954853, dated November 22, 1993, seats designed to be attached to the floors of fork-lift trucks were held to be classifiable in subheading 8431.20.00, HTSUS. This ruling was based on the position that the seats qualified as parts for tariff purposes and, pursuant to Section XVI, Note 2(b), HTSUS, are classifiable with the machines or apparatus (i.e., fork-lift trucks) with which they are solely or principally used. HQ 954853 is set forth as "Attachment A" to this document.

It is now Customs position that these fork-lift truck seats are classifiable in subheading 9401.80.40, HTSUS, as other seats (other than those of heading 9402), whether or not convertible into beds. Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 954853, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis in HQ 966854, 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: November 25, 2003

MYLES B. HARMON,
Director;
Commercial Rulings Division.

Attachments

Section XVI, Note 2(a), HTSUS, states, in relevant part, that subject to certain exceptions that are not relevant here, parts of machines which are goods included in any of the headings of chapters 84 and 85 are in all cases to be classified in their respective headings. Note 2(b) states that other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading are to be classified with the machines of that kind.

Heading 9401 covers all seats, including those for vehicles, provided they comply with the conditions prescribed in Chapter 90, Note 2, HTSUS. Note 2 states, in part, that articles referred to in heading 9401 are to be classified there only if designed for placing on the floor or ground.

Notwithstanding that the seats may otherwise qualify for inclusion in heading 9401, we have ruled that the classification of parts in Section XVI is governed by the legal notes of that section and those of Chapters 84 and 85 as well. HQ 950634, dated March 18, 1993.

Seats for fork-lift trucks qualify as "parts" because they provide comfort and stability for the operator while driving the vehicle and while operating the lift forks. Therefore, these seats aid the safe and efficient operation of the vehicle. The seats are not within the exclusions in Section XVI, Note 1. They are not goods included in any of the headings of Chapters 84 or 85. It is necessary, for purposes of this decision, to assume that if the seats are sold or otherwise provided only to fork-lift truck distributors they are principally, if not solely, used with these trucks. Certainly, there is no evidence in the file to dispute such a conclusion. Therefore, the seats in issue qualify as parts suitable for use solely or principally with fork-lift trucks of heading 8427.

HOLDING:

Under the authority of GRI 1, the seats for fork-lift trucks are provided for in heading 8431. They are classifiable in subheading 8431.20.00, HTSUS, subject to free entry. The protest should be allowed.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, you should mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and to the public via the Diskette Subscription Service, Lexis, the Freedom of Information Act and other public access channels.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966854
CLA-2 RR:CR:GC 966854 JAS
CATEGORY: Classification
TARIFF NO.: 9401.80.40

MS. SUZANNE O'HEARN
CHINA DISTRIBUTORS, INC.
19200 W. Dodge Road
P.O. Box 540486
Omaha, NE 68154

RE: HQ 954853 Revoked; Seats for Fork-Lift Trucks

MS. O'HEARN:

HQ 954853, issued to you on November 22, 1993, on behalf of China National Machinery Import/Export Corporation, Peking, China, in connection with Protest 3307-02-100032, concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of seats for fork-lift trucks. HQ 954853 classified these seats in subheading 8431.20.00, HTSUS, as other parts suitable for use solely or principally with the machinery of headings 8425 to 8430; heading 8427 (i.e., fork-lift trucks). We have reconsidered this classification and now believe that it is incorrect. Any liquidation or reliquidation of the entries in Protest 3307-02-100032 will be unaffected by this decision.

FACTS:

The merchandise in HQ 954853 is described only as seats designed to be attached to the floors of fork-lift trucks. Fork-lift trucks are motorized material handling vehicles typically with a cab and seat for the driver, designed to vertically lift and transport loads.

The seats were originally entered under the duty-free provision in subheading 8431.20.00, HTSUS, on the basis that they were designed solely for fork-lift trucks and distributed solely to dealers in these trucks. However, the entries were liquidated under a provision of heading 9401, HTSUS, as other seats, on the basis that they were "seats," and were designed for placing on the floor [of fork-lift trucks], a requirement for goods of heading 9401.

The HTSUS provisions under consideration are as follows:

8431.20.00	Parts suitable for use solely or principally with the machinery of headings 8425 to 8430: Of machinery of heading 8427
*	* * *
9401.80.40	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof: Other seats

ISSUE:

Whether seats that are parts of fork-lift trucks are provided for *eo nomine* in heading 9401.

LAW AND ANALYSIS:

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

Section XVI, Note 2(a), HTSUS, states, in relevant part, that subject to certain exceptions that are not relevant here, parts of machines which are goods included in any of the headings of chapters 84 and 85 are in all cases to be classified in their respective headings. Note 2(b) states that other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading are to be classified with the machines of that kind. Additional U.S. Rule of Interpretation 1(c), HTSUS, states, in part, that a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory.

Heading 9401 covers all seats, including those for vehicles, provided they comply with the conditions prescribed in Chapter 94, Note 2, HTSUS. Note 2 states, in part, that articles referred to in heading 9401 are to be classified there only if designed for placing on the floor or ground. Seats for fork-lift trucks meet the terms of this note.

By its terms, Additional U.S. Rule 1(c), HTSUS, applies in the absence of special language or context which otherwise requires. Section XVI, Note 2 is such special language or context, but only where the competing provisions at issue are within Section XVI. See *Nidec Corp. v. United States*, 861 F. Supp. 136, *aff’d*, 68 F. 3d 1333 (Fed Cir. 1995). However, in this case, because one of the competing provisions, heading 9401, is outside Section XVI, Note 2 to that section does not provide special language or context which supercedes Additional U.S. Rule of Interpretation 1(c), HTSUS. See HQ 561353, dated September 19, 2002.

Notwithstanding that seats for fork-lift trucks may otherwise qualify as parts of heading 8431, an unlimited *eo nomine* provision describes a good by name, and ordinarily covers all forms of the named article. With the exception of seats of heading 9402, heading 9401 covers all seats, including those for vehicles provided, as noted in Chapter 94, Note 2, they are designed for placing on the floor or ground. Heading 9401 is a specific provision for purposes of Additional U.S. Rule of Interpretation 1(c), HTSUS.

HOLDING:

Under the authority of Additional U.S. Rule of Interpretation 1(c), HTSUS, seats for fork-lift trucks are provided for in heading 9401. They are classifiable in subheading 9401.80.40, HTSUS. HQ 954853, dated November 22, 1993, is revoked.

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