

Bureau of Customs and Border Protection

General Notices

19 CFR Part 122

Required Advance Electronic Presentation of Cargo Information: Revised Compliance Dates for Air Cargo Information

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

ACTION: Announcement of revised compliance dates.

SUMMARY: This document advises the public of the revised implementation schedule set forth by the Bureau of Customs and Border Protection requiring the advance electronic transmission of information for cargo brought into the United States by air. The original date set for compliance was March 4, 2004. There will be staggered starting dates for compliance, with the earliest compliance date set for August 13, 2004.

DATES: The compliance date for the advance electronic transmission of inbound air cargo information published December 5, 2003 (68 FR 68140) is modified pursuant to § 122.48a(e)(2). The implementation schedule set forth in the Supplementary Information discussion establishes three different compliance dates when CBP will require electronic transmission of inbound air cargo manifest data, depending on the location of the airport where cargo arrives in the United States.

FOR FURTHER INFORMATION CONTACT: David M. King, Manifest and Conveyance Branch, (202) 927-1133.

SUPPLEMENTARY INFORMATION:

Background

Section 343(a) of the Trade Act of 2002, as amended (the Act; 19 U.S.C. 2071 note), required that the Bureau of Customs and Border

Protection (CBP) promulgate regulations providing for the mandatory collection of electronic cargo information, by way of a CBP-approved electronic data interchange system, before the cargo is either brought into or sent from the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published in the **Federal Register** (68 FR 68140) a final rule specifically intended to effectuate the provisions of the Act. In particular, a new § 122.48a was added to the CBP Regulations (19 CFR 122.48a) to implement the Act's provisions relating to inbound air commerce. Section 122.48a(a) describes the general requirement that for inbound aircraft with commercial cargo aboard, CBP must electronically receive information concerning the incoming cargo in advance of its arrival. Section 122.48a(e)(1) set a general compliance date of March 4, 2004 for those air carriers required to participate, and other parties electing to participate, in advance automated cargo information filing. However, pursuant to § 122.48a(e)(2) CBP has set forth a revised implementation schedule in order to complete necessary modifications to the approved electronic data interchange system, train CBP personnel at affected ports and complete certification testing of new participants.

The CBP-approved electronic data interchange system, through which the affected parties will be required to transmit and receive information pursuant to these regulatory provisions, is known as the Air Automated Manifest System (Air AMS). Although CBP and certain trade members presently participate in Air AMS on a voluntary basis, the final rule established procedures not currently supported by the existing system edits in Air AMS. Therefore, CBP has undertaken to modify certain critical aspects of Air AMS. CBP will introduce these changes by May 13, 2004, when a 90-day certification testing period begins for all parties who develop Air AMS communications.

Accordingly, it is necessary for CBP to revise the compliance dates for the advance electronic transmission of air cargo information as specified in the following implementation schedule. Compliance dates are staggered because they will allow CBP to deploy training resources for its personnel on a regional basis and prevent CBP from having to conduct certification testing for all new participants at one time.

Air AMS Implementation Schedule

Date:	Ports in the following locations:
August 13, 2004	Connecticut, Delaware, District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virginia, West Virginia
October 13, 2004	Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Mexico, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Wisconsin
December 13, 2004	Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, North Dakota, Oregon, Utah, Washington

Beginning on the dates set forth in the implementation schedule above, CBP will require electronic transmission of advance information for any cargo that arrives in the United States by air at a port of entry within one of the locations specified.

Technical Requirements

The technical specifications required for participation in Air AMS are detailed in the CBP publication Customs Automated Manifest Interface Requirements (CAMIR-AIR), currently available on the CBP website at: http://www.cbp.gov/xp/cgov/import/operations_support/automated_systems/ams/camir_air/.

Once the changes to Air AMS are introduced, CBP will update CAMIR-AIR with the new technical specifications. Those seeking to develop software based on the new system edits may begin certification testing of such software after May 13, 2004. Existing Air AMS participants and potential Air AMS participants will have until the revised compliance date to complete changes to their software or procure software that is compliant with the new specifications.

Dated: February 27, 2004

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

[Published in the Federal Register, March 4, 2004 (69 FR 10151)]

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

Washington, DC, March 10, 2004,

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.*

19 CFR PART 177

REVOCATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION OF AN
ARTIFICIAL TREE

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 an artificial tree.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of an artificial Christmas tree under the Harmonized Tariff Schedule of the United States (“HTSUS”). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin on January 28, 2004. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 23, 2004.

FOR FURTHER INFORMATION CONTACT: Neil S. Helfand, General Classification Branch, (202) 572–8791.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the Customs Bulletin on January 28, 2004, proposing to revoke a ruling letter pertaining to the classification of an artificial Christmas tree. No comments were received in response to the notice.

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

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

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

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY J83527 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966616. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. HQ 966616 is set forth as an attachment to this document.

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

DATED: March 3, 2004

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966616
March 3, 2004
CLA-2 RR:CR:GC 966616 NSH
CATEGORY: Classification
TARIFF NO.: 9505.10.25

MS. KIM YOUNG
BDP INTERNATIONAL
2721 Walker Avenue N.W.
Grand Rapids, MI 49504

RE: NY J83527 revoked; Christmas bendable stick tree; *Midwest of Cannon Falls v. United States; Park B. Smith, Ltd. v. United States*

DEAR MS. YOUNG:

This is in response to your letter of July 15, 2003, requesting reconsideration of NY J83527, dated April 22, 2003, on behalf of Meijer Distribution, on the classification of an artificial tree under the Harmonized Tariff Schedule of the United States (HTSUS). Your letter has been referred to this office for reply.

FACTS:

The subject merchandise, item #921207, is referred to as a "Christmas bendable stick tree" by the manufacturer and is composed, by surface area,

of 70 percent wire and 30 percent plastic. The item measures approximately 18 inches in height and is composed of multiple strands of green colored wire that are intertwined to form the shaft of the tree. Individual green wires are interspersed and protrude from the shaft of the tree, representing its branches; those wires at the bottom of the shaft are the longest and the wires taper off in length as they approach the top of the shaft, giving the item a recognizable evergreen tree appearance. At the tip of each branch is a single LED light that is red, green, or yellow in color. There are a total of 45 branches, and thus a total of 45 LED lights, on the tree. The base of the tree is composed of plastic and houses a two "C" size battery compartment with an on/off switch on the bottom. When turned on, the lights on the tree twinkle or glow.

On April 22, 2003, Customs issued NY J83527, holding that the item was classified in subheading 6702.90.65, HTSUS, which provides for "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f other materials: [o]ther: [o]ther." You contend that the tree is properly classified under heading 9505, HTSUS, which provides, in pertinent part, for "[f]estive, carnival or other entertainment articles. . ."

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, 2186 (1993), notice of the proposed revocation of NY J83527, as described below, was published in the Customs Bulletin on January 28, 2004. No comments were received in response to the notice.

ISSUE:

Whether the subject tree is properly classified as artificial foliage in heading 6702, HTSUS, or as a festive, carnival or other entertainment article under heading 9505, 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). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6. 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 HTSUS by offering guidance in understanding the scope of the headings and GRIs.

The HTSUS provisions under consideration are as follows:

6702 Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit:

6702.90 Of other materials:

Other:

6702.90.65 Other

* * * * *

9505 Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:

9505.10 Articles for Christmas festivities and parts and accessories thereof:

Christmas Ornaments:

Other:

9505.10.25 Other

In *Midwest of Cannon Falls, Inc. v. United States*, 20 CIT 123 (1996), *aff'd in part, rev'd in part*, 122 F.3d 1423, Appeal Nos. 96-1271, 96-1279 (Fed. Cir. 1997) (hereinafter *Midwest*), the court addressed the scope of heading 9505, HTSUS, specifically the class or kind of merchandise termed "festive articles," and provided guidelines for classification of goods in the heading. According to the *Midwest* guidelines, merchandise is classifiable as a festive article under heading 9505, HTSUS, when the article, as a *whole*:

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

The standard set forth in *Midwest* has been affirmed, in pertinent part, through the holding in *Park B. Smith, Ltd. v. United States*, Slip Op. 2001-63 (Ct. Int'l Trade 2001), *aff'd in part, vacated in part*, 347 F.3d 922, (Fed. Cir., 2003) (hereinafter *Park*). In *Park*, the United States Court of Appeals for the Federal Circuit held that articles with symbolic content associated with a particular recognized holiday, such as Christmas trees, meet the *Midwest* criteria and are prima facie classifiable as festive articles under heading 9505, HTSUS.

In addition to the guidelines set forth in *Midwest*, general criteria for determining "class or kind" with respect to classification were set forth in *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter *Carborundum*). Those criteria include the general physical characteristics of the article, the expectation of the ultimate purchasers, the channels, class or kind of trade in which the item moves, the environment of the sale (accompanying accessories and the manner in which the item is advertised and displayed), the use in the same manner as merchandise which defines the class, the economic practicality of so using the import, and recognition within the trade of this use.

In considering the *Midwest* standards, the item in question is not predominately of precious or semiprecious stones, precious metal or metal clad with precious metal. It is intended by the manufacturer to represent a tree, as evidenced by both its shape and color. Furthermore, the item is decorated with colored lights at the ends of its branches, which, when power is turned on, glow and twinkle like those commonly associated with Christmas trees. Although trees may be adorned with blinking lights during holidays other than Christmas, it seems apparent that an evergreen shaped artificial tree with colored and blinking lights is representative, and intended to be, a

Christmas tree. Customs believes that a tree can be decorated to a greater or lesser degree and still be considered a festive article for purposes of being classified under heading 9505, HTSUS. We note that in prior rulings, Customs has held that an evergreen shaped artificial tree that is decorated with just one type of ornamentation, e.g., lights or acrylic beads, has been recognized as a Christmas tree under heading 9505, HTSUS. See NY J84354 dated May 16, 2003 and NY G88387 dated April 2, 2001.

In further considering the general criteria as set forth in *Carborundum*, the packaging in which the item is sold advertises it as "Twinkle, Twinkle Little Tree," and indicates its usefulness as a Christmas decoration for use around the house. Moreover, the item will be sold in Meijer's Trim-A-Tree department, and only for the duration of the Christmas holiday season. It does not appear likely that the item has any utility outside of decorative purposes during the Christmas season because the consumer perceives it as an artificial Christmas tree, which is an accepted symbol of a recognized holiday.

Based on the above analysis, we conclude that the item is an artificial Christmas tree and therefore classified in subheading 9505.10.25, HTSUS, as: "[f]estive, carnival or other entertainment articles. . . : [a]rticles for Christmas festivities and parts and accessories thereof: [c]hristmas ornaments: [o]ther: [o]ther."

HOLDING:

The item at issue herein is classified in subheading 9505.10.25, HTSUS, as "[f]estive, carnival or other entertainment articles. . . : [a]rticles for Christmas festivities and parts and accessories thereof: [c]hristmas ornaments: [o]ther: [o]ther."

EFFECT ON OTHER RULINGS:

NY J83527 is REVOKED. In accordance with 19 U.S. C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

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

PROPOSED MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF METALIZED POLYESTER EMBROIDERY THREAD AND DECORATIVE WIRED TRIM

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

ACTION: Notice of proposed modification of two tariff classification ruling letters and revocation of any treatment relating to the classification of metalized polyester embroidery thread and a decorative wired trim.

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

Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP intends to modify two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of metalized polyester embroidery thread and a decorative wired trim. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of this proposed action.

DATE: Comments must be received on or before April 23, 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 U.S. 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: Ann Segura Minardi, Textiles Branch, (202) 572-8822.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify two ruling letters pertaining to the tariff classification of metalized polyester embroidery thread and a decorative wired trim. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) J81433, dated March 11, 2003 (Attachment A), and NY J82071, dated March 21, 2003 (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 databases for rulings in addition to the two 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, 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, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY J81433, CBP ruled that the sample described as the metalized polyester gold embroidery thread was classifiable in subheading 5606.00.0090, HTSUSA, which provides for gimped yarn, and strip and the like of heading 5404 or 5405, gimped. Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") to heading 5606 specifically exclude "gimped metalized yarn". As such, we have determined that this metalized polyester gold embroidery thread and should be classified in subheading 5605.00.9000, HTSUSA, which provides for "Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal: Other."

In NY J82071, CBP ruled that two of the four samples at issue were classifiable in subheading 5607.50.3500, HTSUSA, which provides for twine, cordage, rope and cable of synthetic fibers. Since the issuance of that ruling, CBP has reviewed the classification of the

sample identified as item # MXT 12208 and has determined that the cited ruling is in error. We have determined that this item, composed of metalized strip, untwisted filament and wire, is classified pursuant to a GRI 1 analysis, in subheading 5605.00.9000, HTSUSA, which provides for other metalized yarn.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY J81433, dated March 11, 2003, and NY J82071, dated March 21, 2003, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 966599 (Attachment C) and HQ 966438 (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 transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: March 3, 2004

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 J81433
March 11, 2003
CLA-2-54:RR:NC:N3:351 J81433
CATEGORY: Classification
TARIFF NO.: 5402.43.9040, 5606.00.0090

MS. EVELYN EDWARDS
TEXMAC, INC.
3001 Stafford Drive
P.O. Box 668128
Charlotte, NC 28266-8128

RE: The tariff classification of polyester embroidery thread from Japan.

DEAR MS. EDWARDS:

In your letter dated February 26, 2003, you requested a ruling on tariff classification.

You submitted two samples of 100% polyester filament embroidery thread. You state that they will be used in the commercial embroidery business under the commercial name Rapos. There is no indication that either has been dressed for sewing thread. You state that they come in 1,000-, 2,000- and

5,000-meter lengths and in a wide array of colors. However, this ruling will only apply to the two samples before us.

The green is composed of two multifilament plies twisted together. The applicable subheading for the green yarn will be 5402.43.9040, Harmonized Tariff Schedule of the United States (HTS), which provides for synthetic filament yarn (other than sewing thread) not put up for retail sale, other yarn, single, of polyester, other, other, multifilament, with twist of 5 turns or more per meter. The general rate of duty will be 8.2 percent ad valorem.

The gold thread is composed of polyester strip wrapped spirally (gimped) around a multifilament core which itself has no twist and does not twist with the strip. The strip meets the tariff definition of textile.

The applicable subheading for the gold thread will be 5606.00.0090, HTS, which provides for gimped yarn, and strip and the like of heading 5404 or 5405, gimped. The general rate of duty will be 8.4 percent ad valorem.

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

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

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY J82071
March 21, 2003
CLA-2-56:RR:NC:N3:351 J82071
CATEGORY: Classification
TARIFF NO.: 5607.50.3500, 6307.90.9889

MS. CAROL KRUPSKAS
IMPORT SUPERVISOR
KAMINO INTERNATIONAL TRANSPORT, INC.
Airport Industrial Park, Bldg. B4A
Valley Stream, NY 11581

RE: The tariff classification of cords with wires, an applique, and trimmings from China.

DEAR MS. KRUPSKAS:

In your letter dated March 14, 2003, you requested a ruling on behalf of Horizon Fabrics, on tariff classification.

You submitted four samples.

Item MXT12207 is composed of filament yarn mixed with a wire. One side is red yarn and the other is green; these are held in place by yarns criss-crossing the length of the wire. Every 1/4" or so, the yarns are pulled creating a puff effect, alternately red and green.

Item MXT12208 is composed of metallic strip wrapped around untwisted filament and a wire. The “eyelash” effect is created by twisting two groups of the same yarn, about 1” in length, at 1-1/4” intervals.

In both cases, the wire allows the yarns to be shaped for decorative purposes. In neither case is the wire itself decorative.

The applicable subheading for MXT12207 and MXT12208 will be 5607.50.3500, Harmonized Tariff Schedule of the United States (HTS), which provides for twine, cordage, rope and cable; of other synthetic fibers; not braided or plaited; other. The general rate of duty will be 20 cents per kg + 11.2 percent ad valorem.

Subheading 5607.50.3500 falls within textile category designation 201. Based upon international textile trade agreements products of Taiwan and China 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.

Item MXT12230 is a row of Christmas trees, each 3/4” tall, made of two layers of polyester fabric with a thin layer of batting in between.

Item DD11298-123 is an assortment of iron-on appliques in the shape of flowers. Each is composed of untwisted polyethylene strips; each strip is under 5 mm in width, thus meeting the tariff definition of textile strip. Each applique is a smaller flower sewn onto a larger one with a metal bead in the center.

The applicable subheading for MXT12230 and DD11298-123 will be 6307.90.9889, HTS, which provides for other made-up textile articles, other. The general rate of duty will be seven percent ad valorem.

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

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

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966599
CLA-2: RR:CR:TE 966599 ASM
CATEGORY: Classification
TARIFF NO.: 5605.00.9000

MS. EVELYN EDWARDS
TEXMAC, INC.
3001 Stafford Drive
P.O. Box 668128
Charlotte, NC 28266-8128

RE: Modification of NY J81433; Metalized Polyester Embroidery Thread

DEAR MS. EDWARDS:

This letter involves the modification of Customs and Border Protection (CBP), Department of Homeland Security, New York Ruling (NY) J81433, dated March 11, 2003, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of metalized polyester embroidery thread. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. A sample of the subject merchandise was submitted to this office for examination.

FACTS:

The subject article is a metalized polyester gold embroidery thread. The thread is composed of polyester strip wrapped spirally (gimped) around a multifilament core which itself has no twist and does not twist with the strip. The strips are considered textile material for tariff classification purposes. In NY J81433, the subject thread was classified in subheading 5606.00.0090, HTSUSA, which provides, in pertinent part, for gimped yarn, and strip and the like of heading 5404 or 5405, gimped.

ISSUE:

What is the proper classification for the merchandise?

LAW AND ANALYSIS:

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

The subject article is classifiable pursuant to GRI 1 and is specifically described in Heading 5605, HTSUSA, which provides for "Metalized yarn, whether or not gimped, being textile yarn or strip or the like of heading 5404

or 5405, combined with metal in the form of thread, strip or powder or covered with metal." In addition, the 56.05 EN states that the heading covers:

- (2) Yarn of any textile material (including monofilament, strip and the like, and paper yarn) covered with metal by any other process.

The 56.05 EN further states that the heading covers products consisting of a core of plastic film coated with "metal dust, sandwiched by means of an adhesive between two layers of plastic film." The EN also provides exemplars of the types of yarns covered by heading 5605, e.g., . . . fancy cords as used by confectioners, obtained by twisting together two or more metalized yarns." Although the yarn at issue is gimped, it is more specifically and completely described as a metalized yarn of heading 5605, HTSUSA. Furthermore, by the terms of heading 5606, HTSUSA, the subject article is excluded from heading 5606, HTSUSA, which provides for "Gimped yarn, and strip and the like of heading 5404 or 5405, gimped (other than those of heading 5605 and gimped horsehair yarn); chenille yarn (including flock chenille yarn); loop wale-yarn" because the heading specifically excludes gimped metalized yarns of heading 5605. See EN to 56.06.

Clearly, the subject merchandise meets the terms of heading 5605, HTSUSA, and is in accordance with the EN. Additionally, Section XI EN, General Note (I)(B)(2), Table I (page 920, 2002 Ed.) places metalized yarn in heading 56.05 "in all cases." Furthermore, in two recent rulings CBP classified metalized yarn in subheading 5605.00.9000, HTSUSA. See Headquarters Ruling (HQ) 964997, dated May 20, 2002; and NY J82791, dated April 4, 2003. Therefore, by virtue of GRI 1, the metalized polyester gold embroidery thread is properly classified under subheading 5605.00.90, HTSUSA, which provides for metalized yarn.

In view of the foregoing, we have determined that NY J81433, incorrectly classified the metalized polyester gold embroidery thread.

HOLDING:

NY J81433, dated March 11, 2003, is hereby modified.

The subject merchandise, identified as metalized polyester gold embroidery thread, is correctly classified in subheading 5605.00.9000, HTSUSA, which provides for, "Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal: Other." The general column one duty rate is 13.2 percent *ad valorem*. The textile category is 201.

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 the importer check, close to the time of shipment, the Textile Status Report for Absolute Quotas, previously available on the CBP Electronic Bulletin Board (CEBB), which is available on the CBP Bulletin Website at www.customs.treas.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, the importer should contact the local CBP office prior to importation of this

merchandise to determine the current status of any import restraints or requirements.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966438
CLA-2: RR:CR:TE 966438 ASM
CATEGORY: Classification
TARIFF NO.: 5605.00.9000

MS. CAROL KRUPSKAS
IMPORT SUPERVISOR
KAMINO INTERNATIONAL TRANSPORT, INC.
Airport Industrial Park, Bldg. B4A
Valley Stream, NY 11581

RE: Modification of NY J82071; Tariff Classification of Decorative Wired Trim

DEAR MS. KRUPSKAS:

This letter involves the modification of Customs and Border Protection (CBP), Department of Homeland Security, New York Ruling (NY) J82071, dated March 21, 2003, concerning the classification, among other things, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain decorative wired trim. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. A sample of the subject merchandise was submitted to this office for examination.

FACTS:

The subject article is a decorative wired trim, Item # MXT12208. The article is composed of lengths of metalized plastic strips that have been wrapped around untwisted filament and a wire. A decorative "eyelash" effect is created by twisting groups of the plastic strips, in 1-inch lengths, at 1-1/4 inch intervals. The strips are considered textile material for tariff classification purposes.

In NY J82071, the subject article was classified in subheading 5607.50.3500, HSTUSA, which provides for twine, cordage, rope and cable; of other synthetic fibers; not braided or plaited; other. Based on information received from the import quote sheet supplied by the broker we note that the subject article is described as an "eyelash cord" made from 20 percent wire and 80 percent metallic, of knit construction. As such, we have determined that the plastic strips are metalized.

ISSUE:

What is the proper classification for the merchandise?

LAW AND ANALYSIS:

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

The subject article is classifiable pursuant to GRI 1 and is specifically described in Heading 5605, HTSUSA, which provides for "Metalized yarn, whether or not gimped, being textile yarn or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal." In addition, the 56.05 EN states that the heading covers:

- (2) Yarn of any textile material (including monofilament, strip and the like, and paper yarn) covered with metal by any other process.

The 56.05 EN further states that the heading covers products consisting of a core of plastic film coated with "metal dust, sandwiched by means of an adhesive between two layers of plastic film." The EN also provides exemplars of the types of yarns covered by heading 5605, e.g., . . . fancy cords as used by confectioners, obtained by twisting together two or more metalized yarns."

The yarn at issue contains a wire. EN (1) to heading 5607 includes therein as twine, cordage or rope, yarn reinforced with metal thread. In the instant case, the wire does not reinforce the yarn. Rather, the wire allows the yarn to be shaped, lending to its decorative nature. The heading text to 5605 more specifically and completely describes the decorative wire trim as metalized yarn. In fact, the heading text mentions yarn combined with metal thread or strip such as this wire.

Clearly, the subject merchandise meets the terms of heading 5605, HTSUSA, and is in accordance with the EN. Additionally, Section XI EN, General Note (I)(B)(2), Table I (page 920, 2002 Ed.) places metalized yarn in heading 56.05 "in all cases." Furthermore, in two recent rulings CBP classified metalized yarn in subheading 5605.00.9000, HTSUSA. See Headquarters Ruling (HQ) 964997, dated May 20, 2002; and NY J82791, dated April 4, 2003. Therefore, by virtue of GRI 1, the decorative wired trim is properly classified under subheading 5605.00.90, HTSUSA, which provides for metalized yarn.

In view of the foregoing, we have determined that NY J82071, incorrectly classified the decorative wired trim.

HOLDING:

NY J82071, dated March 21, 2003, is hereby modified.

The subject merchandise, Item # MXT 12208, is correctly classified in subheading 5605.00.9000, HTSUSA, which provides for, "Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or

covered with metal: Other." The general column one duty rate is 13.2 percent *ad valorem*. The textile category is 201.

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 the importer check, close to the time of shipment, the Textile Status Report for Absolute Quotas, previously available on the CBP Electronic Bulletin Board (CEBB), which is available on the CBP Bulletin Website at www.customs.treas.gov.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
LIQUID 1,2-POLYBUTADIENE RUBBER (NISSO-PB B-1000)

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

ACTION: Notice of revocation of ruling letter and revocation of treatment relating to tariff classification of Liquid 1,2-Polybutadiene Rubber (NISSO PB-B 1000).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of Liquid 1,2-Polybutadiene Rubber (NISSO PB-B 1000) under the Harmonized Tariff Schedule of the United States ("HTSUS"), and is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the Customs Bulletin on February 4, 2004. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 23, 2004.

FOR FURTHER INFORMATION CONTACT: ichelle Garcia, General Classification Branch, (202) 572-8745.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the Customs Bulletin on February 4, 2004, proposing to revoke NY 818016, which involved the classification of Liquid 1,2- Polybutadiene Rubber (NISSO PB-B 1000). No comments were received in response to the notice.

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

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

the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY 818016 and any other ruling not specifically identified in order to reflect the proper classification of the Liquid 1,2-Polybutadiene Rubber (NISSO PB-B 1000), pursuant to the analysis set forth in HQ 966558, attached. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service 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: March 9, 2004

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

Attachment

[ATTACHMENT]

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

HQ 966558

March 9, 2004

CLA-2 RR:CR:MG 966558 MG

CATEGORY: Classification

TARIFF NO.: 4002.20.00

MARIA CELIS
NEVILLE PETERSON LLP
80 Broad Street - 34th Floor
New York, NY 10004

RE: Revocation of NY 818016; Liquid 1,2-Polybutadiene Rubber (NISSO PB-B1000)

DEAR MS. CELIS:

This letter is in reply to your letter of June 13, 2003, on behalf of Nisso America, Inc., in which you request that we reconsider NY 818016, dated March 19, 1996. We have reviewed the classification in NY 818016 and have determined that it is incorrect. This ruling sets forth the correct classification.

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, 2186 (1993), notice of the proposed revocation of NY 818016 was published on February 4, 2004, in the Customs Bulletin, Volume 38, Number 6. No comments were received in response to that notice.

FACTS:

In NY 818016, Customs classified Liquid 1,2-Polybutadiene Rubber (NISSO PB-B1000), under subheading 3902.90.00, HTSUS and concluded that the product “did not meet the criteria for ‘synthetic rubber’ as set forth in Note 4(a) to Chapter 40, HTSUSA.”

NISSO PB-B1000 is a good which is made from 100% 1,2 liquid polybutadiene polymer. It is used in the manufacture of tires and treads for automobiles, industrial products such as conveyor belts, hoses, seals, and gaskets, and other applications. Butadiene rubber is the second largest-volume synthetic rubber accounting for 23% of synthetic rubber consumption. You submit that polybutadiene rubber is known in commerce as synthetic rubber.

ISSUE:

What is the classification under the HTSUS of the NISSO PB-B1000?

LAW AND ANALYSIS:

The General Rules of Interpretation (GRI) of the Harmonized Tariff Schedule of the United States (HTUS) govern the proper classification of merchandise. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. For an article to be classified in a particular heading, such heading must describe the article, and not be excluded therefrom by any legal note. Hence, if the merchandise is not classifiable in accordance with GRI 1 and if the headings and legal notes do not otherwise require, the merchandise may be classified in accordance with subsequent GRI.

The Explanatory Notes (ENs) are the official interpretation of the scope of the Harmonized Commodity Description and Coding System, which served as the basis for the HTSUS. The Court of International Trade has held that while the Explanatory Notes “do not constitute controlling legislative history, they nonetheless are intended to clarify the scope of the HTSUS . . .” See *Structural Industries, Inc. v. United States*, Slip Op. 02-141, p.5 n. 1 (Dec. 4, 2002), citing *Jewelpack Corp. v. United States*, 97 F. Supp. 2d 1192, 1196 n.6 (CIT 2000). Moreover, the Explanatory Notes are especially persuasive “when they specifically include or exclude an item from a tariff heading.” See *H.I.M./Fathom, Inc. v. United States*, 981 F. Supp. 610, 613 (1997).

The HTSUS headings under consideration are as follows:

3902	Polymers of propylene or of other olefins, in primary forms:
3902.90.00	Other
	* * *
4002	Synthetic rubber and factice derived from oils, in primary form or in plates, sheets, or strip; mixtures of any product of heading 4001 with any product of this heading, in primary forms or in plates, sheets or strip:
4002.20.00	Butadiene rubber (BR).

Note 2(h) to Chapter 39, HTSUS, provides:

This chapter does not cover:

(h) Synthetic rubber, as defined for purposes of chapter 40, or articles thereof.

Note 4 to Chapter 40, HTSUS, provides in pertinent part:

In note 1 to this chapter, and in heading 4002, the expression “synthetic rubber” applies to:

- (a) Unsaturated synthetic substances which can be irreversibly transformed by vulcanization with sulfur into non-thermoplastic substances, which at a temperature between 18 C and 29 C, will not break on being extended to three times their original length and will return, after being extended to twice their original length, within a period of 5 minutes, to a length not greater than 1-1/2 times their original length. For the purposes of this test, substances necessary for the cross-linking such as vulcanizing activators or accelerators, may be added; the presence of substances as provided for by note 5(b)(ii) and (iii) is also permitted. However, the presence of any substances not necessary for the cross-linking, such as extenders, plasticizers and fillers, is not permitted.

In your letter of June 13, 2003, you submit that PB-B1000 is a synthetic rubber material which satisfies the requirements for classification as a synthetic rubber, as set out in Note 4(a) to Chapter 40, HTSUS. You claim therefore, that it is classified under subheading 4002.20.00, HTSUS, as a synthetic rubber.

You claim that the imported merchandise is classified under heading 4002, HTSUS, as a synthetic rubber in primary form. According to Note 3 of Chapter 40, the expression “primary forms” applies only to the following forms:

- (a) Liquids and pastes (including latex, whether or not pre-vulcanized, and other dispersions and solutions);
- (b) Blocks of irregular shape, lumps, bales, powders, granules, crumbs and similar bulk forms.

The PB-B1000 is in liquid form and thus is in primary form pursuant to Note 3 of Chapter 40.

You further submit that PB-B1000 is precluded from classification under heading 3902, HTSUS, as a primary form of propylene because (1) it satisfies the requirements of a synthetic rubber of heading 4002, and (2) it is more than a simple olefin of heading 3902. Note 2(h) to Chapter 39 states that Chapter 39 does not cover synthetic rubber as defined for purposes of Chapter 40.

You further aver that olefins classified under Heading 3902 do not have the elastic properties of the olefins, like butadiene rubber, under Chapter 40. You state that butadiene rubber is an olefin, but because it meets the elasticity tests of Note 4(a) to Chapter 40, it may not be classified as an olefin in primary form.

In support of your contention that the subject good has the elastic properties of a Chapter 40 synthetic rubber, and as such may not be classified as an olefin in primary form, you submitted two laboratory test results, one by Dainippon Jushi Kenkyusho, Co., Ltd. of Japan (DJK) and the other by Specialized Technology Resources (STR). The STR test uses the ASTM D 412-98a tests to measure elongation. In this regard, according to the standard's formula, as long as the percentage of elongation at break is above 200%, then the specimen has stretched to three times its original length without breaking.

Customs Laboratory in New York reviewed the ASTM D 412-98a test measurements taken by STR and analyzed the dumbbell samples with a recipe prepared by Nippon Soda Company of Tokyo, Japan. The subject merchandise was tested for compliance with Note 4(a) of Chapter 40, using the ASTM D 412-98a elongation test. Customs Laboratory Report NY-2003-1253, dated July 31, 2003, determined that a sample of the subject goods meets the definition of Note 4(a) to Chapter 40, HTSUS.

Therefore, pursuant to Note 2(h) to Chapter 39, HTSUS, the subject good is not included in Chapter 39. Accordingly, we find it is classified in subheading 4002.20.00, HTSUS, as: "Synthetic rubber and factice derived from oils, in primary form or in plates, sheets, or strip; mixtures of any product of heading 4001 with any product of this heading, in primary forms or in plates, sheets or strip: Butadiene rubber (BR)."

HOLDING:

The NISSO PB-B1000 is classified in subheading 4002.20.00, HTSUS, as: "Synthetic rubber and factice derived from oils, in primary form or in plates, sheets, or strip; mixtures of any product of heading 4001 with any product of this heading, in primary forms or in plates, sheets or strip: Butadiene rubber (BR)."

EFFECT ON OTHER RULINGS:

NY 818016, dated March 19, 1996, is hereby REVOKED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO THE TARIFF CLASSIFICATION
OF SATELLITE RADIO RECEIVER SETS

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the tariff classification of satellite radio receiver sets.

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 proposing to revoke a ruling pertaining to the tariff classification of satellite radio receiver sets under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is proposing to revoke any treatment previously

accorded by Customs to substantially identical transactions. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before April 23, 2004.

ADDRESS: Written comments are to be addressed to the U.S. Bureau of 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 the offices of 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 Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 572-8785.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of satellite radio receiver sets. Although in this notice Customs is specifically referring to one ruling (NY I84878), 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 databases for rulings in addition to the one

identified. No additional 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 Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), 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 to 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 its agents for importations of merchandise subsequent to the effective date of the final notice of the proposed action.

In NY I84878, dated August 28, 2002, Customs classified three models of XM satellite radio kits, which met the criteria for goods put up in sets for retail sale according to GRI 3(b) and having the essential character of the satellite radio receiver, in subheading 8527.29.80, HTSUS, which provides, in relevant part, for reception apparatus for radiobroadcasting of a kind used in motor vehicles not combined with sound recording or reproducing apparatus. Upon reconsideration of this ruling, it came to our attention that all of the receivers did in fact have sound recording or reproducing apparatus, and that one of the three receivers is not of a kind used in motor vehicles.

Therefore, it is now Customs position that two of the models are properly classified in subheading 8527.21.40, HTSUS, which provides in part for reception apparatus for radiobroadcasting of a kind used in motor vehicles combined with sound recording or reproducing apparatus. The third model is properly classified in subheading 8527.31.60, HTSUS, which provides for other radiobroadcasting reception apparatus combined with sound recording or reproducing apparatus.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY I84878 (Attachment A), and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in HQ 966675 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchan-

dise. Before taking this action, we will give consideration to any written comments timely received.

Dated: March 10, 2004

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY I84878
August 28, 2002
CLA-2-85:RR:NC:1:108 I84878
CATEGORY: Classification
TARIFF NO.: 8527.29.8060

MS. LUCY RICHARDSON
SONY
123 Tice Boulevard
Woodcliff Lake, New Jersey 07675

RE: The tariff classification of XM Satellite Radio from Japan.

DEAR MS. RICHARDSON:

In your letter dated August 1, 2002 you requested a tariff classification ruling.

The item in question is an XM Satellite radio kit, designed for use in an automobile. The kits are configured in three different model types.

Model DNR-XM01C is composed of the satellite receiver, antenna, remote control, a cassette adapter/car battery cord and a cradle. Model DNR-XM01R is composed of the satellite receiver, RF modulator, antenna, remote control and cradle.

Model DNR-XM01H is composed of a satellite receiver, antenna, remote control, cradle and an AC power adapter

Each specific model kit is packaged for retail sale. Samples of the actual packaging, in which the kits will be imported and sold, at retail, have been furnished to this office. Each configured kit is designed to provide satellite radio to a listener while using an automobile. Satellite radio is broadcast radio transmitted via a satellite, directly to the receiver, on the XM frequency band. It is designed to provide 100 channels of subscriber radio to the user.

Explanatory note X to GRI 3b provides for the purpose of this rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:

- A. Consist of at least two different articles which are, prima facie, classifiable in different headings.
- B. Consist of products put up together to meet a specific activity; and

C. Are put up in a manner suitable for sale to users without repackaging (e.g. in boxes or cases or on boards).

All of the aforementioned models are composed of items, which are prima facie classified in different headings. Together they enable the user to receive satellite radio broadcasts. Based upon the supplied retail packaging, for each model type, it is evident that the configured items will not be repackaged after importation. Therefore it is the opinion of this office that each configured model type do in fact constitute a set in accordance with Explanatory Note X.

In accordance, in part, with GRI 3b . . . goods put up in sets for retail sale, which cannot be classified by reference to GRI 3a, shall be classified as if they consisted of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the goods.

It is the opinion of this office, that for each model type, the item which imparts the essential character to these particular sets, is the XM satellite radio receiver. It clearly provides the most important function and dominates each set model in nature and its role with the other constituent components.

Upon review of the descriptive literature and detailed explanation of the function of the XM satellite radio receiver, it is the opinion of this office that it is in fact a radio broadcast receiver. The receiver does meet the requirements of a radio broadcast receiver as defined by *Channel Master v. United States*; "A radio receiver, as that term is used in the tariff schedules, is an eo nomine designation for an article which has been lexicographically and judicially defined as capable of performing three basic functions; selectivity, amplification and detection". The XM satellite radio receiver unit accomplishes these three functions. It has a tuner that demodulates and amplifies the satellite radio signal. Therefore this office considers the receiver unit to be a radio broadcast receiver designed for use in a motor vehicle.

The applicable subheading for the XM Satellite Radio sets, models DNR-XM01C, DNR-XM01H and DNR-XM01R will be 8527.29.8060, Harmonized Tariff Schedule of the United States (HTS), which provides for Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy : Other: Other . . . Other. The rate of duty will be 4.4 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Michael Contino at 646-733-3014.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966675
CLA-2 RR: CR: GC 966675 DBS
CATEGORY: Classification
TARIFF NO.: 8527.21.40, 8527.31.60

MS. LUCY RICHARDSON
SONY ELECTRONICS INC.
123 Tice Boulevard
Woodcliff Lake, NJ 07675

RE: Revocation of NY I84878; Sony XM Satellite Radio

DEAR MS. RICHARDSON:

This is in response to your letter dated July 23, 2003, to the CBP National Commodity Specialist Division (NCSA), requesting reconsideration of New York ruling letter (NY) I84878, which was issued to you on behalf of Sony Electronics Inc. (Sony) on August 28, 2002. NY I84878 classified three XM satellite radio kits in subheading 8527.29.80, Harmonized Tariff Schedule of the United States (HTSUS). Your request was forwarded to this office for reply. We have reviewed NY I84878 and have found it to be incorrect. In addition, we have considered the new information which you submitted that was unavailable to CBP at the time of the ruling. The following sets forth the correct classification.

FACTS:

The merchandise at issue is three XM satellite radio kits. Satellite radio is broadcast radio transmitted via a satellite, directly to the receiver, on the XM frequency band. It is intended to provide 100 channels of subscriber radio to the user. The kits are configured in three model types. In NY I84878, the models were listed as DNR-XM01C, DNR-XM01R and DNR-XM01H. You have informed us that two of the letters were transposed, and that the model numbers are actually DRN-XM01C, DRN-XM01R and DRN-XM01H.

NY I84878 stated that model DRN-XM01C ("C" model) is composed of the satellite receiver, antenna, remote control, a cassette adapter/car battery cord and a cradle. Model DRN-XM01R ("R" model) is composed of the satellite receiver, RF modulator, antenna, remote control and cradle. Model DRN-XM01H ("H" model) is composed of a satellite receiver, antenna, remote control, cradle and an AC power adapter. Each kit is packaged for retail sale. Samples of the actual packaging in which the kits will be imported and sold were furnished to the NCSA at the time of the original ruling request. Each configured kit is designed to provide satellite radio to a listener while using a motor vehicle.

Though NY I84878 stated that all three models were for use in a motor vehicle, your request for reconsideration stated that the "C" and "R" models are advertised as predominantly for use in a motor vehicle, and that the "H" model is primarily intended for the home. The "R" model is designed for custom installation while the "C" model is designed for self-installation. They are imported and sold with car docking stations that stabilize the unit in a motor vehicle. The antennae have magnetic bases for rooftop mounting. The

“H” model, on the other hand, has an XM-compatible antenna that does not have a magnetic base. It is imported with an audio cable that connects to a home stereo system or boom box. The “C” and “H” models may be adapted to home or car, respectively, but require add-on kits to do so.

You submitted that all three receivers at issue provide signal selection, amplification and detection capabilities for the XM satellite radio frequency. You explained that “R” model operates by the the RF modulator supplying power to the cradle, which in turn powers the tuner. The tuner sends audio signals back through the cradle to the RF modulator box which modulates and converts the signal to FM frequency. The RF output is connected to a car stereo head unit. The “C” model operates in a similar fashion, but instead of a RF modulator, the signal is sent through the cassette adapter. The signal for the “H” model is sent through the audio cable.

Unknown to Sony at the time of the original ruling request, the satellite radio receivers in these kits incorporate Synchronous Dynamic Random Access Memory (SDRAM) for sound recording. The XM receivers record XM audio and then retrieve from the SDRAM. The receivers’ digital process circuitry repairs any discrepancies in the audio signal output by the SDRAM, removes any textual data associated with the audio signal and converts the signal from digital to analog. In addition, CBP subsequently issued rulings on other models of XM’s receivers (NY J83641, dated April 30, 2003 and NY J84658, dated May 14, 2003) and classified them in subheading 8527.31.60, HTSUS, which provides for other radiobroadcasting receivers combined with sound recording or reproducing apparatus. You claim that the receivers classified in those rulings are substantially similar to the instant models for tariff purposes, but for the fact that the “C” and “R” are of a kind used in a motor vehicle.

In light of the foregoing, you claim models DRN-XM01C and DRN-XM01R are classified in subheading 8527.21.40, HTSUS, and that model DRN-XM01H is classified in subheading 8527.31.60, HTSUS.

ISSUE:

What is the tariff classification of Sony’s XM Satellite Receiver kits that incorporate sound recording or reproducing apparatus?

LAW AND ANALYSIS:

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

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8527 Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:

Radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy:

8527.21 Combined with sound recording or reproducing apparatus:

8527.21.40 Other.

* * *

8527.29 Other

8527.29.80 Other.

* * *

Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy:

8527.31 Combined with sound recording or reproducing apparatus:

Other:

8527.31.60 Other.

When imported as a set, classification of merchandise under a single heading cannot be determined by applying GRI 1; we must apply the other GRIs. GRI 3 provides for goods that are, *prima facie*, classifiable in two or more headings. GRI 3(b) instructs that mixtures, composite goods, and goods put up in sets for retail sale shall be classified by the component which gives them their essential character. The components constitute “goods put up in sets for retail sale,” if they satisfy the following criteria set forth in EN (X) to GRI 3(b). If they do not meet the criteria, the components are classified individually. Goods are classified as sets put up for retail sale if they:

- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without re-packing (e.g., in boxes or cases or on boards).

EN (X), GRI 3(b). Each of the satellite radio kits is comprised of goods that are *prima facie* classifiable in different headings. The sets consists of ar

ticles put up together to meet the particular need of receiving and listening to XM radio broadcasting in either the home or motor vehicle. They are packaged together for retail sale. Therefore, the three models meet the criteria to be classified as a set; and are thus classified by that article which imparts the essential character.

The EN VIII to GRI 3(b), states, "The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods." As the receiver is the article without which there would be no reception of the XM broadcast, it imparts the essential character of the set.

To classify the satellite radio receiver, we turn back to GRI 1. Heading 8527, HTSUS, provides, in relevant part, for reception apparatus for radiobroadcasting. EN 85.27(B) states in part that sound radio-broadcasting apparatus are for the reception of signals by means of electro-magnetic waves transmitted through the ether without any line connection. In *Channel Master v. United States*, 648 F. Supp. 10, 12 (CIT 1986), *aff'd* 856 F.2d 177 (Fed. Cir. 1988), the Court of International Trade stated that a radio receiver, as the term was used in the predecessor tariff schedule to the HTSUS, is an *eo nomine* designation for an article which has been lexicographically and judicially defined as capable of performing three basic functions: selectivity, amplification, and detection. *See also NEC America, Inc. v. United States*, 596 F. Supp. 466, 470 (CIT 1984), *aff'd* 760 F.2d 1295 (CAFC 1985); *General Electric Co. v. United States*, 525 F. Supp. 1244, 1248 (CIT 1981), *aff'd* 69 CCPA 166 (1982). We are still guided by this today. *See* Headquarters ruling letter (HQ) 964419, dated January 2, 2001. As the instant receivers obtain a radio signal via satellite, they use electro-magnetic waves transmitted through the ether without any line connection to receive the signals. *See id.* Moreover, according to Sony, they select, amplify and detect (demodulate) the signals. Therefore, at GRI 1, they are reception apparatus for radio broadcasting of heading 8527, HTSUS.

In order to determine in which subheading(s) they fall, we turn to GRI 6, which permits the comparison of same-level subheadings within a heading, by the terms of the subheading and any subheading notes, as well as the application of Rules 1 through 5, applied by the appropriate substitution of terms, unless the context otherwise requires. Applying GRI 1 through GRI 6, the terms of the first subheading level at issue require us to determine whether any of the Sony models are of a kind used in motor vehicles.

To determine the class or kind to which a good belongs, the courts have provided factors, which are indicative but not conclusive. These factors are set forth in *United States v. Carborundum Co.*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), *cert. denied*, 429 U.S. 979 (hereinafter *Carborundum*). They include the general physical characteristics of the article, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use.

All three Sony models at issue are transportable satellite radio receivers. However, the antennae for the "C" and "R" model receivers have magnetic bases for attaching to a vehicle rooftop. They are advertised for installation in a motor vehicle. They are sold as a set for retail sale with accessories such

as the car docking station for use in a motor vehicle or the cassette adapter or RF modulator to connect the receiver to an existing car stereo. Given these factors for the environment of sale, we may assume that the expectation of the ultimate purchaser is to use the receiver in a motor vehicle. Other XM satellite radio receivers similarly equipped for motor vehicles, though, like the "C" model, may be adapted for use in the home. Taking into account, however, that unlike certain other models, such as those subject to NY J83641 and NY J84658, the "R" and "C" models are imported primarily for use in a motor vehicle, we find that they may be considered to be "of a kind used in motor vehicles," classified under either subheading 8527.21 or 8527.29, HTSUS.

Based on the information available at the time of the original ruling request, these two receivers were properly classified under subheading 8527.29, HTSUS. However, Sony has since submitted that all three of the receivers incorporate SDRAM, which is sound recording apparatus. Accordingly, the "R" and "C" models are classified under subheading 8527.21, HTSUS, specifically in subheading 8527.21.40, HTSUS.

The "H" model is imported with an audio cable and XM-compatible antenna. It is advertised and sold with a home accessory kit. However, the user may separately purchase a car accessory kit, which includes the items specialized for use in a motor vehicle, most of which are currently presented with the "C" model. We note that NY J83641 and NY J84658 classified satellite radio receivers with internal digital sound recording capability from XM radio broadcasts in subheading 8527.31.60, HTSUS, which provides, in relevant part, for other reception apparatus for radio broadcasting combined with sound recording or reproducing apparatus. The receiver classified in NY J83641 is designed for use with a personal computer. The receiver classified in NY J84658 is sold with home adapter, vehicle adapter or audio system kits, which are advertised equally. Applying the *Carborundum* factors to the foregoing, we find the "H" model is not of a kind used in motor vehicles. Therefore, it should not have been classified in NY I84878 under subheading 8527.29, HTSUS. However, it is a radiobroadcast receiver, classifiable under subheading 8527.31. As with the receivers in NY J83641 and NY J84658, it incorporates SDRAM, and is therefore classified under subheading 8527.31.60, HTSUS.

For the foregoing reasons, we find NY I84878 to be incorrect.

HOLDING:

At GRI 3(b), Sony's XM satellite radio receiver kit models DRN-XM01C and DRN-XM01R are classified in subheading 8527.21.40, HTSUS, which provides for "Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy: Combined with sound recording or reproducing apparatus: Other."

At GRI 3(b), Sony's XM satellite radio receiver kit model DRN-XM01H is classified in subheading 8527.31.60, HTSUS, which provides for "Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Other radiobroadcast receivers, including

apparatus capable of receiving also radio telephony or radiotelegraphy: Combined with sound recording or reproducing apparatus: Other: Other.”

EFFECT ON OTHER RULINGS:

NY I84878, dated August 28, 2002, is hereby REVOKED.

MYLES B. HARMON,
Director;
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION OF A
BARBECUE AND APRON SET

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

ACTION: Notice of revocation of a ruling letter and treatment relating to tariff classification of a barbecue and apron set.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of a barbecue and apron set under the Harmonized Tariff Schedule of the United States (“HTSUS”). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin on February 4, 2004.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 23, 2004.

FOR FURTHER INFORMATION CONTACT: Neil S. Helfand, General Classification Branch, (202) 572-8791.

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 com-

munity needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the Customs Bulletin on February 4, 2004, proposing to revoke a ruling letter pertaining to the classification of a barbecue and apron set. No comments were received in response to this notice.

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

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

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY F84298 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 966615. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. HQ 966615 is set forth as an Attachment to this document.

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

DATED: March 9, 2004

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

Attachment

[ATTACHMENT]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966615
March 9, 2004
CLA-2 RR:CR:GC 966615 NSH
CATEGORY: Classification
TARIFF NO.: 8215.20.00

MS. CAROLE ZIMMER
QUALITY CUSTOMS BROKERS, INC.
2200 Landmeier Road
Elk Grove, IL 60007

RE: NY F84298 revoked; Barbecue and apron set

DEAR MS. ZIMMER:

This letter is pursuant to U.S. Customs and Border Protection (Customs) reconsideration of NY F84298, dated March 24, 2000, on behalf of your client, Ace Products Management. We have reviewed the classification and have determined that it must be revoked. This ruling letter sets forth the correct classification.

FACTS:

The subject merchandise is identified as a "Harley-Davidson Barbecue and Apron Set." It consists of tongs, a two-tine fork, a spatula and a textile bib apron for use in food preparation. Each of the three utensils is made of steel and has a wooden handle; the apron is woven and made of 100 percent cotton.

On March 24, 2000, Customs issued NY F84298, holding that the three utensils were classified under subheading 8215.20.00, HTSUS, and the apron was separately classified under subheading 6211.42.0081, HTSUS.

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, 2186 (1993), notice of the proposed revocation of NY F84298, as described below, was published in the Customs Bulletin on February 4, 2004. No comments were received in response to the notice.

is therefore applicable in examining whether the apron is part of the barbecue set.

With respect to classifying proposed sets under GRI 3(b), EN Rule 3(b) (X) states the following:

For purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:

- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. . . ;
- (b) consist of products or articles put together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking (e.g. in boxes or cases or on boards).

With respect to criteria (a), the three utensils and textile apron are classifiable in two distinct headings and thus satisfy the criteria. The tongs, two-tine fork and spatula are all classified under heading 8215, HTSUS; the apron is classified under heading 6211, HTSUS.

- 1) The tongs are intended to be meat tongs such as would be used during barbecuing and other food preparation. Although heading 8215, HTSUS, uses the language “sugar tongs,” EN 82.15 refers to “[s]ugar tongs of all kinds (cutting or not) . . . meat tongs . . .” As such, the tongs included in this set fall under heading 8215, HTSUS, specifically subheading 8215.90.50, HTSUS.
- 2) The “two-tine fork” is classified under heading 8215, HTSUS, specifically under heading 8215.99.24, HTSUS, which applies to “Table forks . . . and barbecue forks with wooden handles.”
- 3) The spatula, although not listed under heading 8215, HTSUS, is classified therein, specifically under 8215.99.50, HTSUS, because it possesses the essential characteristics or common purpose as the other items set forth in the heading. *See* HQ 963975, dated July 10, 2000, holding that a spatula, although not listed among the exemplars under heading 8215, HTSUS, falls within the scope of the heading by the application of *ejusdem generis*.
- 4) The textile apron, the type in question being used to protect the wearer during food preparation, has repeatedly been held by Customs as classified under heading 6211, HTSUS, specifically subheading 6211.42.0081, HTSUS. *See* HQ 959450, dated April 7, 1997.

With respect to criteria (b), the four articles comprising the proposed set are combined to meet a particular need or carry out a specific activity. All four components contribute to the specific activity of food preparation. The tongs, two-tine fork and the spatula are hand held utensils used for the preparation of food, specifically the direct manipulation of food items. In regard to the apron, Customs believes that it is included in a set of barbecue utensils. *See* NY H83943. The bib apron at issue protects the wearer from barbecue spillage or grease spattering during the preparation of food. Even though the apron is not used to directly manipulate food items, as are the three utensils, its usefulness for protecting the wearer makes it a recognized and accepted item by the consumer for purposes of food preparation. Therefore, its use in conjunction with the utensils for the single purpose of food

preparation is readily apparent. Although these items would have utility if sold separately, they are not multidimensional in that their usefulness is limited, and they are perceived to be limited to cooking activities.

With respect to criteria (c), it is not disputed that this set is being put up in a manner suitable for sale directly to users without repacking.

We therefore find that the subject goods constitute “goods put up in a set for retail sale” within the meaning of GRI 3(b). EN Rule 3(b) (X) directs that, if the items in question are considered a set, the classification is made according to the component, or components taken together, which can be regarded as conferring on the set as a whole its essential character. In this instance, the essential character of the set is imparted by the three utensils which are classified under subheading 8215.20.00, HTSUS, as: “Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof: Other sets of assorted articles.”

Notwithstanding the apron’s inclusion as a constituent part of the set for classification purposes under GRI 3(b), the apron is a textile article and remains subject to visa and quota requirements, regardless of where the set is classified. The apron at issue falls within category 359.

HOLDING:

The barbecue utensils and the apron constitute a GRI 3(b) set and are classified under subheading 8215.20.00, HTSUS, as “Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof: Other sets of assorted articles.” The apron, which falls within category 359, will remain subject to visa and quota requirements regardless of where the set is classified.

EFFECT ON OTHER RULINGS:

NY F84298 is REVOKED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

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

REVOCATION OF CLASSIFICATION LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF HOOK AND EYE TAPE USED FOR BRASSIERES

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to the classification of hook and eye tape used for brassieres.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises

interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the classification of hook and eye tape for brassieres under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on February 4, 2004 in the CUSTOMS BULLETIN in Volume 38, Number 6. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 23, 2004.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Textiles Branch, at (202) 572-8821.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke New York Ruling Letter (NY) H88921, dated March 15, 2002, and to revoke any treatment accorded to substantially identical merchandise was published in the February 4, 2004 CUSTOMS BULLETIN, Volume 38, Number 6. No comments were received in response to this notice.

As stated in the notice of proposed revocation, this notice covers any rulings on this merchandise which may exist but have not been

specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one 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 have advised CBP during this notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY H88921 and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 966818. HQ 966818 is set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

DATED: March 9, 2004

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

Attachment

[ATTACHMENT]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966818
March 9, 2004
CLA-2 RR:CR:TE 966818 TMF
CATEGORY: Classification
TARIFF NO.: 8308.10.0000

MR. HARRISON CHEN
THE JAY COMPANY
22 West 38th Street
New York, NY 10018

RE: New York Ruling Letter (NY) H88921; classification of hook and eye tape fasteners used for brassieres; Additional U.S. Rule of Interpretation 1(c)

DEAR MR. CHEN:

Pursuant to your request dated February 26, 2002 for a binding tariff classification ruling of certain hook and eye fasteners, Customs and Border Protection issued New York Ruling Letter (NY) H88921, dated March 15, 2002. This ruling classified the goods in subheading 6212.90.0010, Harmonized Tariff Schedule of the United States Annotated, which provides for brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: other, of cotton or cotton and rubber or plastics.

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

Pursuant to section 625(c), Tariff Act of 1930, as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub.L. 103-182, 107 Stat. 2057, 2186 (1993) notice of the proposed revocation of NY H88921 was published on February 4, 2004, in Vol. 38, No. 6 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

FACTS:

The description of the hook and eye tape used for brassieres is taken directly from New York Ruling Letter (NY) H88921, dated March 15, 2002, which reads as follows:

The submitted sample consists of two strips of woven cotton fabric tape. On one piece metal hooks are sewn-on at one-inch intervals. On the other strip metal eyes are sewn-on at one-inch intervals. Your inquiry indicates that the item will be used for bras.

ISSUE:

Whether the merchandise at issue is classifiable as parts of brassieres or similar articles of heading 6212, as parts of garments, other than those of heading 6212, under heading 6217, or as hooks and eyes of heading 8308, HTSUSA.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. When goods cannot be classified solely on the basis of GRI 1 and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 8308, HTSUSA, provides *eo nomine* for, among other things, hooks and eyes. In this instance, the subject hook and eye tape will be used in the production of brassieres. The issue in this case is whether the subject articles in their condition as imported are classifiable in heading 6212, HTSUSA, which provides for various body supporting garments and parts thereof, or in heading 6217, HTSUSA, as parts of garments, other than those of heading 6212, or as hooks and eyes of a kind used in clothing of heading 8308, HTSUSA.

Heading 8308, HTSUSA, provides, in part, for hooks and eyes, eyelets and the like, of a kind used for clothing. Heading 6212, HTSUSA, provides, in part, for brassieres and parts thereof and heading 6217 provides, in part, for parts of garments other than those of heading 6212, such as parts of swimwear, exercise and dance garments. We refer to the Explanatory Note for 83.08 which states that heading 8308 includes hooks, eyes and eyelets for clothing. The EN also states that the articles referred to “may contain parts of leather, textiles, plastics, wood, horn, bone, ebonite, mother of pearl, ivory, imitation precious stones, etc., provided they retain the essential character of articles of base metal. They may also be ornamented by working of the metal.”

In this instance, three tariff provisions address the hook and eye materials at issue, but only one is appropriate for classifying the instant goods by application of Additional U.S. Rule of Interpretation 1(c), HTSUS, which states:

[I]n the absence of special language or context which otherwise requires—
a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for “parts” or “parts and accessories” shall not prevail over a specific provision for such part or accessory

In the case at bar, heading 6212 provides for a variety of body supporting garments and parts thereof while heading 8308 provides *eo nomine* for hooks and eyes. In consideration of Rule 1(c) above, heading 6212, HTSUSA, which covers hooks and eyes that are used solely or principally as parts of body supporting garments, is not the most specific heading for classifying the instant goods. For the same reason, heading 6217 is not the most specific heading. Rather, heading 8308, HTSUSA, which provides for hooks and eyes (that may contain textile parts) used in any type of clothing, is the most specific for classifying the instant articles

By application of Additional U.S. Rule of Interpretation 1(c), HTSUS, heading 8308, HTSUSA, which provides *eo nomine* for hooks and eyes, is the most specific heading for classifying the instant articles. In this instance, the subject article is classifiable in 8308.10.0000, HTSUSA, which provides, in pertinent part, for hooks, eyes, and eyelets. See Headquarters Ruling Letter (HQ) 966246, dated October 18, 2003; NY F83301, dated March 20, 2000, and NY 832964, dated December 13, 1988.

HOLDING:

NY H88921, dated March 15, 2002, is hereby revoked. Based on the foregoing, the subject hook and eye tape is classifiable in subheading 8308.10.0000, HTSUSA, which provides, in pertinent part, for hooks, eyes, and eyelets, dutiable at the column one general rate of 1.1 cents/kilogram + 2.9 percent *ad valorem*.

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

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.