

# Bureau of Customs and Border Protection

## *General Notices*

### **AUTOMATED COMMERCIAL ENVIRONMENT (ACE): ANNOUNCEMENT OF A NATIONAL CUSTOMS AUTOMATION PROGRAM TEST OF AUTOMATED TRUCK MANIFEST FOR TRUCK CARRIER ACCOUNTS**

**AGENCY:** Bureau of Customs and Border Protection.

**ACTION:** General notice.

**SUMMARY:** This document announces that the Bureau of Customs and Border Protection (CBP), in conjunction with the Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), plans to conduct a National Customs Automation Program (NCAP) test concerning the transmission of automated truck manifest data. This notice provides a description of the test process, outlines the development and evaluation methodology to be used, sets forth eligibility requirements for participation, and invites public comment on any aspect of the planned test.

**DATES:** The test will commence no earlier than November 29, 2004. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

**ADDRESSES:** Written comments concerning program, policy and technical issues should be submitted to Mr. Thomas Fitzpatrick via e-mail at [Thomas.Fitzpatrick@dhs.gov](mailto:Thomas.Fitzpatrick@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Fitzpatrick via e-mail at [Thomas.Fitzpatrick@dhs.gov](mailto:Thomas.Fitzpatrick@dhs.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The CBP Modernization Program has been created to improve efficiency and security, increase effectiveness, and reduce costs for the Bureau of Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends heavily on successfully modernizing CBP business functions and the information technology that supports those functions.

The initial thrust of the Customs and Border Protection Modernization Program (see North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2170 (December 8, 1993)) focuses on Trade Compliance and the development of the Automated Commercial Environment (ACE) through the National Customs Automation Program (NCAP). The purposes of ACE, successor to the Automated Commercial System (ACS), are to streamline business processes, to facilitate growth in trade, to ensure cargo security, and to foster participation in global commerce, while ensuring compliance with U.S. laws and regulations. Development of ACE will consist of many releases. Each release, while individually achieving critical business needs, will also set forth the foundation for the subsequent releases.

The component for which this document is announcing a test involves allowing participating Truck Carrier Accounts to transmit electronic manifest data in ACE (including advance cargo information as required by section 343 of the Trade Act of 2002, as amended by the Maritime Transportation Act of 2002 (see 68 FR 68140, December 5, 2003)). Truck Carrier Accounts who participate in this test will have the ability to electronically transmit the truck manifest data and obtain release of their cargo, crew, conveyances, and equipment via the ACE Portal or electronic data interchange (EDI) messaging. The Federal Motor Vehicle Carrier Safety Administration (FMCSA) will participate in this test.

#### **Authorization for the Test**

The Customs Modernization provisions in the North American Free Trade Agreement Implementation Act provide the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. This test is authorized pursuant to § 101.9(b) of the CBP Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. See T.D. 95-21. See also 67 FR 77128, dated December 16, 2002, which re-designated the NCAP program test of the account-based declaration prototype as the Free and Secure Trade (FAST) prototype and modified and expanded the prototype; and 68 FR 55405, dated September 25, 2003, which further modified the FAST prototype.

#### **Implementation of the Test**

This test of the Automated Truck Manifest will be conducted in a phased approach, with primary deployment scheduled for no earlier than November 29, 2004. At the initial stages of the test, truck manifest data will be transmitted for conveyances crossing at the ports of Blaine, Washington, and Buffalo, New York. Subsequent deployment will occur at Champlain, New York; Detroit, Michigan; Laredo, Texas; Otay Mesa, California; and Port Huron, Michigan, on

dates to be announced. Implementation of the automated truck manifest functionality will not be immediate at all of the above referenced ports. CBP will announce the implementation and sequencing of truck manifest functionality at these ports as they occur. The test will eventually be expanded to include ACE Truck Carrier Account participants at all land border ports, and subsequent releases of ACE will include all modes of transportation. Additional participants and ports will be selected throughout the duration of the test. CBP will process additional Truck Carrier Account applications as CBP expands the universe of participation for this test.

### **Eligibility and Acceptance**

Eligibility criteria for truck carrier participation was set forth in the **Federal Register** notice published February 4, 2004 (69 FR 5360). All Truck Carrier Account applications meeting the eligibility criteria were accepted. To be eligible for participation in this test, a carrier must have:

1. Submitted an application (i.e., statement of intent to establish an ACE Account and to participate in the testing of electronic truck manifest functionality) as set forth in the February 4, 2004, **Federal Register** notice (69 FR 5360);
2. Provided a Standard Carrier Alpha Code(s) (SCAC);
3. Provided the name, address, and e-mail of a point of contact to receive further information.

In addition, participants intending to use the ACE Secure Data Portal as the means to file the manifest must submit a statement of the ability to connect to the Internet. Participants intending to use an EDI interface will be required to first test their ability to send and receive electronic messages in either American National Standards Institute (ANSI) X12 or United Nations/ Directories for Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT) format with CBP.

It is anticipated that future applications meeting the eligibility criteria will be accepted. Acceptance into this test does not guarantee eligibility for, or acceptance into, future technical tests.

### **Expansion of Participation**

Participation in the automated truck manifest test will be expanded in the future as funding allows; however the eligibility criteria may differ from the criteria listed in this notice. Additionally, expansion of this test to allow future applicants to participate may be delayed due to funding or technological constraints. CBP will accept, hold, or reject additional Truck Carrier Account applications throughout the duration of the test. New applicants interested in participating in this test must submit an application, per the Account Application Process section of the February 4, 2004, **Federal Register** notice (69 FR 5360), to CBP, and will be notified of the sta-

tus of their application (i.e., whether CBP has accepted their application for participation upon an initial expansion, or, is holding their application pending a further expansion of the test). CBP will notify any applicant not meeting the eligibility criteria or providing an incomplete application, and allow such applicant an opportunity to re-submit its application.

Eligible Truck Carrier Accounts are further reminded that participation in the automated electronic truck manifest functionality is not confidential. Lists of approved participants will be made available to the public.

#### **Method of Transmission**

For purposes of this test, an interface to the trade will be established that will support both manual Internet filing via the ACE Secure Data Portal and EDI filing via either ANSI X12 or UN/EDIFACT messaging. CBP supports multiple communication interfaces for accessing ACE through EDI. Each potential ACE participant must evaluate the options and select the most appropriate interface based upon participant performance and business requirements. The list of options includes:

- CBP Internet Protocol (IP) Virtual Private Network (VPN)/Message Queuing (MQ) Series over the Internet (new option)
- CBP Frame Relay/MQ Series Network
- Value Added Networks (VANS)
- Service Centers

#### **Description of the Test**

##### Transmission of Data Prior to Arrival

Participants in the test of automated truck manifest functionality (Release 4 of ACE) are required to submit truck manifest data including advance cargo information at least one hour in advance of the arrival of the conveyance at the first U.S. port of crossing. If, however, a participant is filing data via the FAST prototype, information must be submitted at least 30 minutes prior to the arrival of the conveyance at the first U.S. port of crossing. This 30-minute or one-hour period will be measured from the time that CBP receives the final manifest submission. Use of the ACE truck manifest system in this test will satisfy required electronic presentation of cargo information for truck carriers as mandated by section 343(a) of the Trade Act of 2002, as amended.

##### Manifest Data

For purposes of this notice, a standard manifest consists of all of the CBP required data (listed below in a later section of this notice) for the establishment of a truck manifest. This data includes advance cargo information as required by the Trade Act of 2002, as

amended by the Maritime Transportation Act of 2002. The data must be submitted either with each manifest submission or portions of this data can be drawn from data stored in the carrier's ACE account. Shipment information can be established in the ACE truck manifest system prior to its association with a specific trip, conveyance, equipment and crew. Conversely, information consisting of trip, conveyance, crew and equipment details can be submitted to ACE truck manifest prior to the submission of shipment details. In all cases, it is required that shipments match the trip to which they are associated.

A truck carrier will transmit manifest/cargo information and is responsible for the accuracy and completeness of the data filed on the electronic manifest. An electronic truck manifest will list the applicable combination of trip, conveyance, equipment and shipment details. The Truck Carrier Account owner will also have the option of delegating the right to transmit the manifest data to a Portal User on its Account.

For purposes of the initial stages of the test, the ACE truck manifest system will accept information regarding the splitting of shipments covered by house bills or master bills. It will not support the splitting of shipments when part is covered by a house bill and part by a master bill. Also, if a transmitting party uses the ACE truck manifest for a conveyance arrival, it must be used for all shipments arriving on that conveyance.

#### Test Processes Supported

The test will support the following processes: Free And Secure Trade (FAST), Pre-Arrival Processing System (PAPS), Border Release Advance Screening and Selectivity (BRASS), Section 321, and In-bond. Automated release processes include transponder and proximity card technology that are utilized in conjunction with the automated truck manifest to facilitate timely releases while maintaining a high level of border security. Transponder and proximity cards must be used in the FAST process and are recommended, but not required, for all other processes (i.e., PAPS, BRASS, Section 321, and In-bond).

The test processes are as follows:

#### PAPS

PAPS is the process for the electronic transmission of immediate delivery, entry, and entry summary data to CBP prior to conveyance arrival through ACS, using the Automated Broker Interface (ABI) module as indicated in 19 CFR 143.32(b). The PAPS system requires the designated entry filer to transmit the entry information via ABI to CBP for validation and risk assessment prior to arrival. For PAPS, the carrier will provide a Shipment Control Number (SCN), which is the Master Bill of Lading, Airway Bill or ProBill Number. If

the carrier is transporting consolidated cargo it will provide both the SCN and its associated Bill Control Number (BCN), which is the House Bill of Lading, Airway Bill or ProBill Number issued by a transportation intermediary (e.g., freight forwarder, Non-Vessel Operating Common Carrier (NVOCC), or freight consolidator). The SCN number provided by the carrier must match the number supplied by the entry filer on the entry. A bar code used to report the Bill number will no longer be needed.

### BRASS

BRASS provides for the tracking and releasing of highly repetitive shipments at land border locations. Parties currently on BRASS received a unique alphanumeric identifier known as a C-4 code when the BRASS application was received and approved by CBP. The C-4 code will be entered by the carrier into the manifest shipment records. In addition, the shipment records must contain the information set forth below (see Data Elements Required to be Reported on the Electronic Manifest). It should be noted that new BRASS applications will not be entertained; only current BRASS users may use BRASS for the Automated Truck Manifest test.

### Section 321

The Section 321 process provides for an electronic method to manifest and enter merchandise not exceeding \$200 in value (which meets the regulatory requirements defined in 19 CFR 10.151 and 10.152) pursuant to 19 U.S.C. 1321. In order to file a Section 321 entry, in addition to the required shipment details listed below (see Data Elements Required to be Reported on the Electronic Manifest), the following information is required: country of origin of the merchandise and value.

### In-bond

In-bond transmissions may be made by the carrier when it knows that the shipment being transported is not to be released for consumption at the port of arrival and is destined for a port beyond that initial port. The in-bond process will support entries for Immediate Transportation (IT), Transportation and Exportation (T&E), and Immediate Exportation (IE). A declaration can be made on the manifest transmission to provide the necessary in-bond data for the shipment destined for another port. Alternatively, the in-bond request can be made via the ACS electronic in-bond transaction QP/WP or presentation of Customs Automated Forms Entry System (CAFES) bar code. Export of in-bond shipments may be reported via ABI (QP/WP).

### FAST

Participants choosing to use FAST may use only FAST with regard to any particular trip. FAST transmissions will remain unchanged in

the initial stages of the test. Truck carriers must submit advance electronic cargo information at least one half hour prior to the arrival of the conveyance at the first U.S. port following the requirements for FAST. The driver must be a registered FAST participant with a proximity card. The truck must be equipped with a transponder. The carrier and importer must be Customs Trade Partnership Against Terrorism (C-TPAT) participants. For participation on the southern border, the manufacturer also must be a C-TPAT participant and the equipment must be sealed.

### **CBP Return Messages**

CBP trip, conveyance, crew, and shipment status messages will be generated and sent to the carrier, after the conveyance has arrived and is processed at the first U.S. port of arrival.

### **Data Elements Required to be Reported on the Electronic Manifest**

On December 5, 2003, CBP published in the **Federal Register** (68 FR 68140) the Final Rule regarding the Required Advance Electronic Presentation of Cargo Information. The following cargo information is required for all processes in the initial stage of the test (except FAST), with some noted modifications:

- (1) Conveyance number, and (if applicable) equipment number (the number of the conveyance is its Vehicle Identification Number (VIN) or its license plate number and state of issuance; the equipment number, if applicable, refers to the identification number of any trailing equipment or container attached to the power unit. For purposes of this test, both the VIN and the license plate number are required);
- (2) Carrier identification (i.e., the truck carrier identification SCAC code (the unique Standard Carrier Alpha Code) assigned for each carrier by the National Motor Freight Traffic Association);
- (3) Trip number and, if applicable, the transportation reference number for each shipment (The transportation reference number is the freight bill number, or Pro Number, if such a number has been generated by the carrier. For purposes of this test the SCN and, if applicable, the associated BCNs are required);
- (4) Container number(s) (for any containerized shipment, if different from the equipment number), and the seal numbers for all seals affixed to the equipment or container(s) (For purposes of this test, seal numbers will be enforced in FAST on the southern border);
- (5) The foreign location where the truck carrier takes possession of the cargo destined for the U.S.;
- (6) The scheduled date and time of arrival of the truck at the first port of entry in the U.S.;
- (7) The numbers and quantities for the cargo laden aboard the truck as contained in the bill(s) of lading (this means the quantity of

the lowest external packaging unit; numbers referencing only containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(8) The weight of the cargo, or, for a sealed container, the shipper's declared weight of the cargo;

(9) A precise description of the cargo and/or the Harmonized Tariff Schedule (HTS) numbers to the 6-digit level under which the cargo will be classified (Generic descriptions, specifically those such as freight of all kinds (FAK), general cargo, and said to contain (STC) are not acceptable.);

(10) Internationally recognized hazardous material code when such cargo is being shipped by truck;

(11) The shipper's complete name and address, or identification number (The identity of the foreign vendor, supplier, manufacturer, or other similar party is acceptable (and the address of the foreign vendor, etc., must be a foreign address). By contrast, the identity of the carrier, freight forwarder, consolidator, or broker, is not acceptable. The identification number will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment.); and

(12) The complete name and address of the consignee, or identification number (The consignee is the party to whom the cargo will be delivered in the U.S., with the exception of Foreign Cargo Remaining On Board (FROB)). The identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment).

Additionally, for purposes of this test, the following information is requested (although not required pursuant to the December 5, 2003 final rule):

(13) DOT number;

(14) Person on arriving conveyance who is in charge;

(15) Names of all crew members;

(16) Date of birth of each crew member;

(17) Commercial driver's license (CDL)/drivers license number for each crew member;

(18) CDL/driver's license state/province of issuance for each crew member;

(19) CDL country of issuance for each crew member;

(20) Travel document number for each crew member;

(21) Travel document country of issuance for each crew member;

(22) Travel document state/province of issuance for each crew member;

(23) Travel document type for each crew member;

(24) Address for each crew member (For purposes of this test, this is defined as the physical location, in the U.S., where a crew member will actually be on this particular trip. This could include a consign-

ee's location, a hotel, a truck stop, or a family or friend's location. Those individuals possessing a FAST ID are exempt from the U.S. address requirement.);

- (25) Gender of each crew member;
- (26) Nationality/citizenship of each crew member;
- (27) Method of transport (defined as the mode by which the merchandise crosses the international border);
- (28) Conveyance type;
- (29) Conveyance state/province of registration; and
- (30) Equipment state/province of registration.

The submission of the following information is considered conditional and must be submitted only where applicable:

- (31) Hazmat endorsement for each crew member;
- (32) Names of all passengers;
- (33) Date of birth of each passenger;
- (34) Travel document number for each passenger;
- (35) Travel document country of issuance for each passenger;
- (36) Travel document state/province of issuance for each passenger;
- (37) Travel document type for each passenger;
- (38) Gender of each passenger;
- (39) Nationality of each passenger;
- (40) Import/export/in-transit indicator;
- (41) Conveyance country of registration;
- (42) Conveyance insurance company name;
- (43) Conveyance insurance policy number;
- (44) Year of issuance;
- (45) Insurance amount;
- (46) Transponder number;
- (47) Shipment release type;
- (48) Equipment type;
- (49) Equipment country of registration;
- (50) Conveyance or equipment instrument of international traffic indicator;
- (51) Estimated date of U.S. departure (for use with T&E or IE);
- (52) In-bond destination;
- (53) Onward carrier (the SCAC code of the carrier to whom the In-bond goods are being transferred);
- (54) Foreign port of unloading;
- (55) Place of receipt;
- (56) Service type (the type of shipping contract);
- (57) Party, ID number, and type (for any other party to the transaction listed on the trucker's bill of lading);
- (58) C-4 code;

- (59) Shipment identifier (any number that the carrier may wish to pass on to the broker (i.e., purchase order, commercial invoice, etc.));
- (60) Paperless in-bond number;
- (61) In-bond CF-7512 number;
- (62) Bonded carrier ID number;
- (63) Transfer carrier (intended to be the cartman, local carrier);
- (64) Transfer destination firms code;
- (65) Hazmat contact;
- (66) FDA freight indicator (identifies FDA jurisdiction over the shipment; this is not the prior notice requirement as set forth in the Bio-Terrorism Act);
- (67) Country of origin of the cargo;
- (68) Value; and
- (69) Entry type code.

The submission of the following information is considered optional upon the discretion of the submitting party:

- (70) Marks and numbers (on packaging to be distinguished from numbers required by advance cargo information).

#### **Misconduct Under the Test**

If a test participant fails to follow the terms and conditions of this test, fails to exercise reasonable care in the execution of participant obligations, fails to abide by applicable laws and regulations, misuses the ACE Portal, engages in any unauthorized disclosure or access to the ACE Portal, or engages in any activity which interferes with the successful evaluation of the new technology, the participant may be subject to civil and criminal penalties, administrative sanctions, liquidated damages, and/or suspension from this test.

Suspensions for misconduct will be administered by the Executive Director, Trade Compliance and Facilitation. A notice proposing suspension will be provided in writing to the participant. Such notice will apprise the participant of the facts or conduct warranting suspension and will inform the participant of the date that the suspension will begin. Any decision proposing suspension of a participant may be appealed in writing to the Assistant Commissioner, Office of Field Operations, within 15 calendar days of the notification date. Should the participant appeal the notice of proposed suspension, the participant must address the facts or conduct charges contained in the notice and state how compliance will be achieved. However, in the case of willful misconduct, or where public health, interest or safety is concerned, the suspension may be effective immediately.

#### **Test Evaluation Criteria**

To ensure adequate feedback, participants are required to participate in an evaluation of this test. CBP also invites all interested par-

ties to comment on the design, conduct and implementation of the test at any time during the test period. CBP will publish the final results in the **Federal Register** and the CBP Bulletin as required by § 101.9(b) of the CBP Regulations (19 CFR 101.9(b)).

The following evaluation methods and criteria have been suggested:

1. Baseline measurements to be established through data analysis;
2. Questionnaire from both trade participants and CBP addressing such issues as:
  - Workload impact (workload shifts/volume, cycle times, etc.);
  - Cost savings (staff, interest, reduction in mailing costs, etc.);
  - Policy and procedure accommodation;
  - Trade compliance impact;
  - Problem resolution;
  - System efficiency;
  - Operational efficiency;
  - Other issues identified by the participant group.

DATED: September 8, 2004

WILLIAM S. HEFFELFINGER III,  
*Acting Assistant Commissioner,  
Office of Field Operations.*

[Published in the Federal Register, September 13, 2004 (69 FR 55167)]

**Notice of Availability for Public Viewing of a Final  
Programmatic Environmental Assessment and a Finding of  
No Significant Impact (FONSI) Relative to Customs and  
Border Protection's Gamma Imaging Inspection System for  
Use at Various Sea and Land Ports of Entry**

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

**ACTION:** General notice.

**SUMMARY:** This document announces the availability for public viewing of a Final Programmatic Environmental Assessment (PEA) and a Finding of No Significant Impact (FONSI) relative to the gamma imaging inspection system employed by the Bureau of Customs and Border Protection at various sea and land ports of entry. The Final PEA and FONSI are being issued and made available to the public in accordance with the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality (CEQ) regulations for Implementing the NEPA.

**DATES:** The Final PEA and the FONSI will be available for public review for a 30-day period beginning on September 16, 2004.

**ADDRESSES:** Copies of the Final PEA and FONSI may be obtained by writing, telephoning, or e-mailing, respectively, as follows: U.S. Customs and Border Protection, Suite 1575, 1300 Pennsylvania Avenue, N.W. Washington D.C. 20229, Attn: Mr. Thomas Nelson; (202) 344-2975; or [THOMAS.Nelson@associates.dhs.gov](mailto:THOMAS.Nelson@associates.dhs.gov); or by accessing the following website address: (click on "Recent Federal Register Notices"): <http://www.cbp.gov/xp/cgov/toolbox/legal>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Nelson at (202) 344-2975 or at [THOMAS.Nelson@associates.dhs.gov](mailto:THOMAS.Nelson@associates.dhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 12, 2004, U.S. Customs and Border Protection (CBP) published a general notice document in the **Federal Register** (69 FR 26400) entitled: "Notice of Availability for Public Viewing of a Draft Programmatic Environmental Assessment Concerning CBP's Use of the Vehicle and Cargo Inspection System (VACIS) at Various Sea and Land Ports of Entry." The May 2004 notice indicated that the draft Programmatic Environmental Assessment (PEA) had been prepared and made available to the public in accordance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) Regulations for Implementing the NEPA (40 CFR Parts 1500-1508), and Department of the Treasury Directive 75-02 (Department of the Treasury Environmental Quality Program). The notice discussed the gamma imaging or radiation inspection system (referred to there as the VACIS system), briefly explained the applicable NEPA process, informed the public on how to obtain a copy of the draft PEA, and requested comments from the public on the draft PEA.

As set forth in the notice, the VACIS system employs a non-intrusive inspection technique that uses low energy gamma radiation technology and allows CBP inspectors to inspect for contraband without having to physically enter into or unload motor vehicles, containers, or other conveyances. Deployment of this technology is already underway and will continue at various land ports and sea ports of entry throughout the United States and Puerto Rico. Given the serious nature of CBP's mission to protect the nation's borders from terrorism, it is envisioned that all ports are candidates for deployment of this technology in the future.

### The NEPA Process

NEPA requires that an agency evaluate for environmental implications any proposal of a major federal action that significantly affects the quality of the human environment. Under § 1508.18(a) of the CEQ regulations (40 CFR 1508.18(a)), a major federal action includes not only new activities but also continuing agency activities, such as the gamma imaging inspection system deployed by CBP. To meet the NEPA evaluation requirement, a federal agency, in some instances, must produce an Environmental Impact Statement (EIS) that thoroughly examines the environmental implications (or impacts) of a major federal action. In other instances, an agency need only prepare an Environmental Assessment (EA) that briefly analyzes the environmental impacts to assist the agency in decision making. An EA is preliminary to production of either an EIS or a Finding of No Significant Impact (FONSI), depending on the preliminary analysis and findings of the EA. The effect of a FONSI is that an agency will not have to produce an EIS. In still other instances, a categorical exclusion may apply to the federal action, in which case the agency need not produce either an EA or an EIS. A programmatic EA (or PEA) is one that evaluates a major federal action on a broad, programmatic basis and is then followed by Supplemental Environmental Assessments (referred to as Supplemental Environmental Documents or SEDs in the draft PEA) that focus the evaluation on particular site-specific localities.

### Comments

The comment period announced in the May 2004 notice ended on June 28, 2004. Only six comments were received. The comments have been reviewed and are addressed in the Final PEA document.

### Further Action

Following issuance of the Final PEA and the FONSI, CBP will issue a draft SED relative to each affected port of entry and make them available for public review by issuance of a notice of availability in a local newspaper of general circulation in each affected locality. Each draft SED will address a local deployment site at a particular port, evaluating potential environmental impacts with respect to the particular conditions present at each locality. Each draft SED also will solicit public comment. CBP will review the comments and then determine whether a FONSI or an EIS is warranted. (CBP notes that while the draft PEA indicated that notice of availability of draft SEDs will be published in the **Federal Register**, this is not necessary under the NEPA process and the CEQ regulations. Accordingly, CBP will publish notice of availability in local newspapers of general circulation.)

Public Review

The Final PEA and FONSI announced in this document will be available for public review for a period of 30 days beginning on the date this document is published in the **Federal Register**. The Final PEA/FONSI can be obtained as follows: By written request submitted to Customs and Border Protection, Suite 1575, 1300 Pennsylvania Avenue, N.W., Washington D.C. 20229, Attn: Mr. Thomas Nelson; by telephone at (202) 344-2975; by e-mail at: [THOMAS.Nelson@associates.dhs.gov](mailto:THOMAS.Nelson@associates.dhs.gov); or by accessing the following website address (click on "Recent Federal Register Notices"): <http://www.cbp.gov/xp/cgov/toolbox/legal>.

Dated: September 13, 2004

IRA REESE,  
*Acting Assistant Commissioner,  
Office of Information and Technology.*

[Published in the Federal Register, September 16, 2004 (69 FR 55832)]



DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, September 15, 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 for MICHAEL T. SCHMITZ,  
*Assistant Commissioner,  
Office of Regulations and Rulings.*



#### **19 CFR PART 177**

#### **REVOCATION OF A RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CER- TAIN LASER UNITS FOR BARCODE SCANNERS**

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

**ACTION:** Notice of revocation of a ruling letter and treatment relating to certain laser units for barcode scanners.

**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 a ruling letter pertaining to the tariff classification of certain barcode scanners. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse on or after November 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** Tom Peter Beris, General Classification Branch, at (202) 572-8789.

#### **SUPPLEMENTARY INFORMATION:**

##### Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice advising interested parties that CBP intended to revoke a ruling letter pertaining to the classification of a laser unit for barcode scanners used with point-of-sale (“POS”) terminals was published on August 4, 2004, in Vol. 38, No. 32 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

As stated in the proposed notice, while CBP is specifically referring to one ruling, HQ 958839, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the 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 the notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 958839 and any other ruling not specifically identified to the extent that they do not reflect CBPs interpretation of the text of heading 8471, HTSUS, pursuant to the analysis set forth in HQ 966863 ("Attachment"). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by the CBP to substantially identical transactions.

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

**DATED:** September 10, 2004

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
**HQ 966863**  
September 10, 2004  
**CLA-2 RR: CR: GC 966863 TPB**  
**CATEGORY: Classification**  
**TARIFF NO.: 8473.30.5000**

TERRY L. ALBERTS  
SPECTRA-PHYSICS SCANNING  
C/O PSC, INC.  
*959 Terry Street*  
*Eugene, OR 97402-9150*

**RE:** Laser Unit; Barcode Scanner; Protest 2904-95-100167; HQ 958839 Revoked.

DEAR MR. ALBERTS:

This is in reference to HQ 958839, dated March 28, 1996, which answered Protest 2904-95-100167. That ruling dealt with the classification of a laser unit for a horizontal scanner under the Harmonized Tariff Schedule of the United States ("HTSUS").

In review of that ruling, Customs and Border Protection ("CBP") has come to the conclusion that the classification issued was in error, and for the reasons stated below, hereby revokes HQ 958839 and classifies the laser unit in subheading 8473.30, HTSUS. Under *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of protest is final on both the protestant and CBP. Accordingly, this decision will not impact the classification of the merchandise which was covered by the entries subject to HQ 958839.

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 the above identified ruling was published on August 4, 2004, in the CUSTOMS BULLETIN, Volume 38, Number 32. No comments were received in response to the notice.

**FACTS:**

The merchandise is described in HQ 958839 as follows:

The laser units are a component of various horizontal scanners which are used with point-of-sale ("POS") systems. The laser diode-based horizontal scanners include the Spectra-Physics HS1250, a brochure of which was provided by the protestant. The horizontal scanners are designed to read bar codes in transaction-intensive environments.

In HQ 958839 CBP held that:

The scanner also cannot be classified as a part or accessory of an ADP machine (or unit thereof) under subheading 8473.30.45, HTSUS, because it is not principally used with the ADP machines (or units thereof) of heading 8471, HTSUS. Rather, the scanner, which is not a "good included" in any chapter 84, 85 or 90 heading, is classifiable under subheading 8473.29.00, HTSUS, which provides for accessories of the machines of heading 8470, HTSUS (cash registers). The laser unit, a part of the horizontal scanner, is also classifiable under this subheading.

**ISSUE:**

Are the laser units classified under subheading 8473.29, HTSUS, which provides for parts and accessories of the machines of heading 8470, or under subheading 8473.30, HTSUS, which provides for parts and accessories of the machines of heading 8471?

**LAW AND ANALYSIS:**

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

The HTSUS provisions under consideration are as follows:

8473	Parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of heading 8469 to 8472:
	Parts and accessories of the machines of heading 8470
8473.29	Other
8473.30	Parts and accessories of the machines of heading 8471

As indicated in the "Facts" section above, HQ 958839 indicated that the horizontal scanner used to read bar codes could not be classified under heading 8471, HTSUS, because it was not principally used with automatic data processing ("ADP") machines (or units thereof). Heading 8471, HTSUS, reads as follows:

Automatic data processing machines and units thereof; magnetic or **optical readers**, machines for transcribing data onto data media in coded

form and machines for processing such data, not elsewhere specified or included:

Emphasis added.

The above heading language does not limit itself merely to ADP machines and units thereof. It goes on to indicate that this heading provides for, *inter alia*, optical readers. The horizontal scanner used to read bar codes meets the terms of this heading, so it cannot be excluded from classification under heading 8471, HTSUS, as determined in HQ 958839.

This interpretation is also consistent with a decision by the Harmonized System Committee in its 21<sup>st</sup> Session (March 1998) to amend Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") to clarify the classification of bar code readers. The 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. The ENs to 84.71 read, in pertinent part, as follows:

(II) MAGNETIC OR OPTICAL READERS, MACHINES FOR  
TRANSCRIBING DATA ONTO DATA MEDIAN CODED FORM AND  
MACHINES FOR PROCESSING SUCH DATA, NOT ELSEWHERE  
SPECIFIED OR INCLUDED

(A) MAGNETIC OR OPTICAL READERS

...

- (2) Optical readers. These do not require the use of special ink. The characters are read by a series of photoelectric cells and translated on the binary code principle. This group also includes bar code readers. These machines generally use photosensitive semiconductor devices, e.g. laser diodes, and are used as input units in conjunction with an automatic data processing machine or with other machines, e.g. cash registers. They are designed for working in the hand, for placing on a table or fixing to a machine.

Underlining added.

From the above description, it is clear that bar code readers of the kind classified in HQ 958839 were within the scope of heading 8471 as optical readers. CBP concurs with this interpretation and would classify these types of devices under subheading 8471.90, HTSUS. The laser unit, therefore, would be classified in subheading 8473.30, HTSUS, which provides for parts and accessories of the machines of heading 8471.

**HOLDING:**

For the reasons stated above, the laser unit is classified under subheading 8473.30.5000, Harmonized Tariff Schedule of the United States Annotated, which provides for parts and accessories of the machines of heading 8471. The 2004 column one, general rate of duty is free. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS**

HQ 958839, dated March 28, 1996, is 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.*

**MODIFICATION OF CLASSIFICATION LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF CERTAIN HOSPITAL GARMENTS FOR PATIENTS**

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

**ACTION:** Notice of modification of one ruling letter and revocation of treatment relating to the classification of certain hospital garments for patients.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying one ruling letter relating to the classification of certain hospital garments for patients 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 August 4, 2004 in the CUSTOMS BULLETIN in Volume 38, Number 32. 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 November 28, 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 modify New York Ruling Letter (NY) J83809, dated May 21, 2003, and to revoke any treatment accorded to substantially identical merchandise was published in the August, 4, 2004 CUSTOMS BULLETIN, Volume 38, Number 32. 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 modifying NY J83809 and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 967039, which is set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment 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:** September 10, 2004

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967039  
September 10, 2004  
CLA-2 RR:CR:TE 967039 TMF  
CATEGORY: Classification  
TARIFF NO.: 6207.91.3010, 6207.21.0030

EDWARD F. JULIANO, JR., ESQ.  
360 Massachusetts Avenue  
Suite 200  
Acton, MA 01720

RE: Modification of New York Ruling Letter (NY) J83809, dated May 21, 2003; Classification of hospital garments

DEAR MR. JULIANO:

This letter is in response to your letter of February 5, 2004, in which you request reconsideration of New York Ruling Letter (NY) J83809, dated May 21, 2003, issued to your client, Standard Textile, Co., Inc., regarding our classification of certain hospital garments, identified as style numbers 74118330 (a pajama short), 724100430 (a pajama bottom), and 72401430 (a pajama top). The merchandise was classified in subheadings 6204.62.4055, 6203.42.4015 and 6205.20.2065, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), respectively.

Upon your request, we have reviewed NY J83809 and find this ruling to be partially in error as it relates to the classification of these goods. Therefore, this ruling modifies NY J83809 as it pertains to the classification of the aforementioned garments.

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 J83809 was published on Au-

gust 4, 2004, in Vol. 38, No. 32 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

**FACTS:**

You describe the merchandise as pajama tops and bottoms that are not imported as sets, but as separate units and never in the same quantities. You also describe the goods as “hospital sleepwear.” However, the description of the three articles at issue, which is taken from NY J83809, dated May 21, 2003, reads as follows:

[Style numbers] 74118330 Pajama Short, 724100430 Pajama Bottom and 72401430 Pajama Top are adult garments that are made in Mexico and Jordan (QIZ).[.] [They are] constructed of woven 55% cotton, 45% polyester fabric. [Style number] 74118330 Pajama Short is a unisex item with a drawstring waist. [Style number] 724100430 Pajama Bottom features a left over right front closure and drawstring waist. [Style number] 72401430 Pajama Top is long sleeve and features a v-neckline, full front left over right four snap closure and left breast pocket.

You indicated in your submission that the pajama bottom, identified as style number 72400430, was incorrectly listed as style number 724100430 and the correct style number is 72400430. Your submitted advertisement describes it as having a non-gapping, overlap fly, which is bar-tacked in the middle and bottom, along with a color-coded, securely bar-tacked drawstring for easy size identification.

You stated that all three articles are designed, manufactured, marketed and sold for use as sleepwear by hospital patients.

**ISSUE:**

Whether the subject merchandise is properly classifiable as sleepwear under heading 6207, HTSUS, or as outerwear garments under headings 6203, 6204 and 6205, HTSUS?

**LAW AND ANALYSIS:**

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

You requested reconsideration of NY J83809 because you believe that the articles at issue are classifiable in heading 6207, HTSUS, which provides for, *inter alia*, men’s nightshirts, pajamas and similar articles. In NY J83809, CBP stated that the goods were interchangeable with hospital scrubs. However, this statement is incorrect. The garments of NY J83809, which are at issue, are not “scrubs” within the meaning of the word or by how they are used.

First, the term “scrubs” is defined as a “protective garment worn by surgeons during operations.” *See* Hyperdictionary at [www.hyperdictionary.com](http://www.hyperdictionary.com). In terms of the features that scrubs have, they are usually unisex, revers-

ible, and the bottoms have a pocket on the rear. For examples, see Headquarters Ruling Letter (HQ) 964962 dated September 25, 2002 (classifying polyester cotton blend fabric scrub bottom and top which features a reversible style, with left side breast pockets and V-neck opening in subheading 6206.30.3040, HTSUS, which provides for women's cotton woven blouses, shirts, and shirt-blouses and the scrub bottom in subheading 6204.62.4020, HTSUSA, which provides for women's cotton woven trousers); and Port Decision (PD) B84280, dated April 25, 1997, classifying hospital scrubs consisting of a shirt and pants in subheading 6206.40.3030 and 6204.63.3510, HTSUSA, as a women's man-made fiber shirt and pants, respectively.)

Your client also manufactures scrubs. In terms of the use of the garments at issue, you state that your client's garments are designed, marketed and sold for patient use only, not hospital/health care personnel use, as demonstrated by the submitted advertisement which describes the goods as "patient apparel". On your submitted invoices, the merchandise is described as "PJ pants", "PJ shorts", and "PJ top" which are sold to hospital clients. Although this information is helpful, it is not controlling as this does not indicate who the ultimate wearer of the garment will be in a hospital/healthcare setting.

With regard to the pajama top, it has an open front with a snap hook closing, which, according to your client, allows for "the medical provider to gain access to the patient's chest area." However, it is distinguishable from a scrub top because it does not have the usual pullover design with no front opening at the neck. With the pajama pant, your client's affidavit describes it as having an overlap fly. However, scrub pants do not have a fly, as a fly "[may] come open and does not provide significant modesty to the user." Your client also stated:

A doctor in a hospital would not use this product as a scrub pant because [it does] not provide . . . [a] degree of modesty. Moreover, a fly would serve no purpose on a scrub pant, which is designed to be used in a surgical environment, because the use of the fly by male medical staff for its intended purpose (to facilitate urination) would necessitate that the medical staff go back through the sterilization process again. Conversely, the fly serves an important purpose with respect to sleepwear for a patient, because it . . . facilitate[s] urination by a male patient.

\*

\*

\*

Because scrub pants are specifically designed for medical staff, it would be extremely uncommon in a healthcare environment for a patient to wear scrub pants.

Some other features of scrub bottoms are that they have sewn pockets on both sides of the garment, which makes the pants reversible. According to your client, hospital sleepwear bottoms are designed for sleeping and do not need pockets. The same also applies to the subject pajama shorts that do not have a fly, any pockets or complete leg coverage. Thus, it is your position that as the articles at issue do not have any of these features, they are not suitable to be worn as scrubs by hospital/healthcare staff. You assert they are only for wear in the hospital by patients.

In the affidavit, your client also referred to the submitted advertisements which show the pajama pants in six other colors/pattern styles along with the one style, Tracy, blue-colored pajama top. Your client stated that the garments are offered in various printed fabric and other colors for easy coordi-

nation with other gowns. According to your client, scrubs are manufactured in a limited range of colors and fabrics selected by medical staff. We find that the garments are not scrubs, but we must consider whether they are sleepwear within heading 6207, HTSUSA.

First, CBP has consistently ruled that pajamas are generally two-piece garments worn for sleeping. One-piece garments are not classifiable as pajamas. Sleep shorts and sleep pants used for sleeping fall into a residual provision within heading 6207, HTSUS, for similar articles. In determining the classification of the subject garments, CBP usually considers the factors discussed in two decisions of the Court of International Trade. In Mast Industries, Inc. v United States, 9 CIT 549, 552 (1985), *aff'd* 786 F.2d 1144 (CAFC, April 1, 1986), the court dealt with the classification of a garment claimed to be sleepwear and cited Webster's Third New International Dictionary which defined "nightclothes" as "garments to be worn to bed." In Mast, the court ruled that the garments at issue were designed, manufactured, and marketed as nightwear and were chiefly used as nightwear. Similarly, in St. Eve International, Inc. v. United States, 11 CIT 224 (1987), the court ruled that the garments at issue were designed, manufactured, and advertised as sleepwear and were chiefly used as sleepwear. In the case of International Home Textile, Inc. v. United States, 21 CIT 280, March 18, 1997, the court addressed the issue of whether certain men's garments were properly classified under the provision for cotton pants, shorts and tops or as sleepwear under the HTSUSA. The court held that in order to be classified as sleepwear, the loungewear items at issue must share that essential character of being for a "private activity", e.g., sleeping. The court also stated that garments classified as sleepwear would be inappropriate for use at "informal social occasions in and around the home, and for other individual, non-private activities in and around the house e.g., watching movies at home with guests, barbecuing at a backyard gathering, doing outside home and yard maintenance work, washing the car, walking the dog, and the like."

The merchandise at issue was classified as outerwear or loungewear in headings 6203, 6204 or 6205, HTSUS, which provide for, *inter alia*, men's trousers, women's shorts, and men's shirts, respectively. However, upon review, the merchandise, which is described by you as hospital garments/patient pajamas, is not scrubs. The garments are not worn outside, but inside in a hospital setting by patients who are receiving medical treatment to recuperate from illness or injury.

In sum, the merchandise is designed for exclusive use by patients while staying in the hospital. Although the subject garments may be worn inside for social activity, it is our view that any use, other than use during a hospital stay while recuperating, would be a fugitive use. See Hampco Apparel, Inc. v. United States, 12 CIT 92 (1988)<sup>1</sup>. Thus, it is our determination that the garments should be reclassified as sleepwear in heading 6207, which provides for, *inter alia*, pajamas and similar articles.

---

<sup>1</sup>In Hampco, the Court of International Trade stated: "The fact that a garment could have a fugitive use or uses does not take it out of the classification of its original and primary use. The primary design, construction, and function of an article will be determinative of classification, whether or not there is an incidental or subordinate function."

**HOLDING:**

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

NY J83809, dated May 21, 2003, is hereby modified. If the tops and bottoms are imported separately (or have no matching component in a shipment), they are classifiable as other sleepwear in subheading 6207.91.3010, HTSUSA, which provides for "Men's or boys' singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles: Other: Of cotton: Other: Sleepwear," dutiable under the general column one rate of 6.1 percent *ad valorem*, quota category number 351. If the tops and bottoms are imported in shipments containing equal numbers of matching tops and bottoms, they are classifiable as other men's pajamas in subheading 6207.21.0030, HTSUSA, dutiable under the general column one rate of 8.9 percent *ad valorem*, quota category number 351.

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

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

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

---

19 CFR PART 177

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF A FEATHER "DUSTER" TICKLER

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

**ACTION:** Notice of proposed modification of a ruling letter and revocation of treatment relating to tariff classification of a feather "duster" tickler.

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

interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a feather “duster” tickler and to revoke any treatment previously accorded by the Bureau of Customs and Border Protection (“CBP”) to substantially identical transactions. Comments are invited on the correctness of the proposed action.

**DATE:** Comments must be received on or before October 29, 2004.

**ADDRESS:** Written comments (preferably in triplicate) 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, NW, Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

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

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises

interested parties that CBP intends to modify a ruling letter pertaining to the tariff classification of a feather “duster” tickler. Although in this notice CBP is specifically referring to one ruling, NY J89913, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the 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 advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or CBP’s previous interpretation of the Harmonized Tariff Schedule of the United States Annotated (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 transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY J89913, dated November 19, 2003, set forth as “Attachment A” to this document, CBP found that a feather “duster” tickler was classified in subheading 9603.90.4000, HTSUSA, as a “feather duster.”

CBP has reviewed the matter and determined that the correct classification of the feather “duster” tickler is in subheading 6701.00.3000, HTSUSA, which provides for skins and other parts of birds with their feathers or down, feathers, parts of feathers, down and articles thereof (other than goods of heading 0505 and worked quills and scrapes); articles of feathers or down.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY J89913, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967294, as set forth in “Attachment B” to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before

taking this action, consideration will be given to any written comments timely received.

Dated: September 14, 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 J89913  
November 19, 2003  
CLA-2-42:RR:NC:3:341 J89913  
CATEGORY: Classification  
TARIFF NO.: 4202.92.9026, 3926.90.9880,  
6307.90.9889, 9603.90.4000, 7009.92.1000

MR. TED YOUNGS  
ORO DESIGN  
503 W. Mt. Pleasant Ave.  
Philadelphia, PA 19119

RE: The tariff classification of an incomplete "sensual" travel kit from China

DEAR MR. YOUNGS:

In your letter dated October 11th, 2003 you requested a classification ruling.

The submitted sample is identified as a "sensual" travel kit. You have indicated that it will be a product of China. As presented for a Ruling decision, the kit includes a fitted carrying case containing a lycra or jersey eye mask, feather duster/tickler with plastic handle, a folding cased mirror of glass and a "cock ring" of silicone plastics. The carrying case is also designed to accommodate other unidentified articles and it is assumed those articles will be assembled within the kit subsequent to import. The carrying case is made-up of thermo molded EVA plastic and is wholly covered on the exterior with man-made fiber textile materials.

The applicable subheading for the fitted carrying case will be 4202.92.9026, Harmonized Tariff Schedule of the United States (HTS), which provides, in part, for other containers or cases, with outer surface of a sheeting of plastic or of textile materials, with outer surface of textile materials, other, of man-made fibers. The duty rate will be 17.8 percent ad valorem.

The applicable subheading for "cock ring" will be 3926.90.9880, HTS, which provides for articles of plastic, other. The duty rate will be 5.3 percent ad valorem.

The applicable subheading for the eye mask will be 6307.90.9889, HTS, which provides for other made up textile articles, other. The duty rate will be 7 percent ad valorem.

The applicable subheading for the feather duster/tickler with plastic handle will be 9603.90.4000, HTS, which provides for feather dusters. The rate of duty will be Free.

The applicable subheading for the folding pocket mirror with aluminum frame will be 7009.92.1000, HTS, which provides for glass mirrors, whether or not framed, including rear-view mirrors: framed: not over 929 cm<sup>2</sup> in reflecting area. The rate of duty will be 7.8 percent ad valorem.

Goods classified in tariff number 4202.92.9026 fall within textile category designation 670. Based upon international textile trade agreements products of China are not currently 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 Textile Status Report for Absolute Quotas, which is available at our Web site at [www.cbp.gov](http://www.cbp.gov). In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 646-733-3041.

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

## [ATTACHMENT B]

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

**HQ 967294**  
**CLA-2 RR:CR:GC 967294 KBR**  
**CATEGORY: Classification**  
**TARIFF NO.: 6701.00.3000**

TED YOUNGS  
ORO DESIGN  
503 W. Mt. Pleasant Ave.  
Philadelphia, PA 19119

**RE:** Modification of NY J89913; Feather "Duster" Tickler

DEAR MR. YOUNGS:

This is in reference to New York Ruling Letter (NY) J89913, issued to you by the Customs and Border Protection ("CBP"), National Commodity Specialist Division, New York, on November 19, 2003. That ruling concerned the classification of a sensual travel kit under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). In NY J89913, we determined that the sensual travel kit was not a set and, therefore, the components must be classified individually. One component, a feather "duster" tickler was classified as a "feather duster". We have reviewed NY J89913 and determined that the classification provided for the feather "duster" tickler is incorrect.

**FACTS:**

NY J89913, concerned an incomplete sensual travel kit which included a feather "duster" tickler. The feather "duster" tickler was classified in sub-heading 9603.90.4000, HTSUSA, as a feather duster. We have reviewed that ruling and determined that the classification of the feather "duster" tickler is incorrect. This ruling sets forth the correct classification for the feather "duster" tickler.

**ISSUES:**

What is the correct classification of the feather "duster" tickler?

**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). Under GRI 1, merchandise is classifiable according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, CBP looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUSA. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUSA provisions under consideration are as follows:

6701           Skins and other parts of birds with their feathers or down, feathers, parts of feathers, down and articles thereof (other than goods of heading 0505 and worked quills and scrapes):

6701.00.3000       Articles of feathers or down

9603           Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees):

\*   \*   \*   \*   \*

9603.90           Other:

9603.90.4000       Feather dusters

At issue is the classification of the feather “duster” tickler in an incomplete sensual travel kit. NY J89913 classified the article as a “feather duster” in subheading 9603.90.4000, HTSUSA. However, EN 96.03 (D) describes “Feather dusters” as consisting “of a bundle of feathers mounted on a handle and are used for dusting furniture, shelves, shop windows, etc.” The instant feather article is not used for “dusting”. The instant feather article is used to “tickle” the body. Therefore, because the EN includes only articles used for cleaning purposes, we find that subheading 9603.90.4000, HTSUSA, is not appropriate. The feather tickler is more properly classified in subheading 6701.00.3000, HTSUSA, as an article of feathers or down.

**HOLDING:**

In accordance with the above discussion, the feather “duster” tickler is classified under subheading 6701.00.3000, HTSUSA, as skins and other parts of birds with their feathers or down, feathers, parts of feathers, down and articles thereof (other than goods of heading 0505 and worked quills and scrapes); articles of feathers or down. The 2004 column one, general rate of duty is 4.7% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY J89913 dated November 19, 2003, is **modified** as to the classification under the HTSUSA of the feather “duster” tickler.

MYLES B. HARMON,  
*Director;*  
*Commercial Rulings Division.*

**MODIFICATION OF CLASSIFICATION LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF NONELECTRIC, METAL BICYCLE BELLS**

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

**ACTION:** Notice of modification of one ruling letter and revocation of treatment relating to the classification of certain non-electric, metal bicycle bells.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying one ruling letter relating to the classification of certain non-electric, metal bicycle bells 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 July 21, 2004 in the CUSTOMS BULLETIN in Volume 38, Number 30. 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 November 28, 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 modify New York Ruling Letter (NY) I89597 dated January 13, 2003, and to revoke any treatment accorded to substantially identical merchandise was published in the July 21, 2004 CUSTOMS BULLETIN, Volume 38, Number 30. 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 modifying NY I89597 and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 967097. HQ 967097 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:** September 13, 2004

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967097  
September 13, 2004  
CLA-2 RR:CR:TE 967097 TMF  
CATEGORY: Classification  
TARIFF NO.: 8306.10.0000

MS. CARI GREGO, CUSTOMS COMPLIANCE MANAGER  
DOLLAR TREE STORES, INC.  
500 Volvo Parkway  
Chesapeake, Virginia 23320

RE: Modification of New York Ruling Letter (NY) I89597, dated January 13, 2003 concerning the classification of bicycle bells from China

DEAR MS. GREGO,

Pursuant to your request dated December 17, 2002 for a binding tariff classification ruling, Customs and Border Protection (formerly U. S. Customs Service) issued New York Ruling Letter (NY) I89597, dated January 13, 2003, which classified certain bicycle bells. This ruling classified the merchandise in subheading 8714.99.8000, Harmonized Tariff Schedule of the United States Annotated, which provides for "Parts and accessories of vehicles of headings 8711 to 8713: Other: Other: Other."

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 I89597 was published on July 21, 2004, in Vol. 38, No. 30 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

**FACTS:**

NY I89597 dated January 13, 2003 describes three bicycle accessories (SKU 803552): Bell, Streamers, Mirror, and Spoke Decorations. The bell, which is the subject of this ruling, is taken directly from the ruling and reads as follows:

You state in your narrative that all of the bicycle accessories are made of molded plastic in elaborate colors. The bell has a base metal housing and operates by twisting the top portion to produce the ring . . . The re-

tail package will contain two . . . [items . . . and that the] samples provided are not packaged for retail sale because mock artwork is not available and does not contain appropriate country.

**ISSUE:**

What is the correct classification of the bicycle bell within the Harmonized Tariff Schedules of the United States Annotated?

**LAW AND ANALYSIS:**

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

CBP originally classified the bicycle bells in subheading 8714.99.8000, which provides in pertinent part for other parts and accessories of vehicles of heading 8711 to 8713. We note that Explanatory Note 87.14 states the following:

This heading covers parts and accessories of a kind used with ...non-motorised cycles, **provided** the parts and accessories fulfill **both** the following conditions:

- i. They must be identifiable as being suitable for use or principally with the above-mentioned vehicles;
- ii. They **must not be excluded** [*emphasis added*] by the provisions of the Notes to Section XVII (see the corresponding General Explanatory Note).

In your original narrative to CBP, you indicated that the subject bells are bicycle accessories that are not packaged for retail sale. We refer to Note 2, Section XVII, which states:

The expressions “parts” and “parts and accessories” do not apply to the following articles, whether or not they are identifiable as for the goods of this Section:

- (d) Articles of heading 83.06.

Although you provided a narrative about the merchandise, you did not provide evidence (i.e., any evidence of retail packaging) of the bell’s exclusive use for bicycles. Rather, you simply stated that the bell is a bicycle accessory. Heading 8306, HTSUSA, provides, in pertinent part, for non-electric, base metal bells, gongs and the like. Note A to EN 83.06, states:

This group covers **non-electric** bells and gongs of base metal . . . [including] . . . bells for bicycles . . .

As the subject bells are parts and accessories, we find that Note 2, Section XVII precludes the goods from classification within heading 8714, HTSUSA.

In this instance, you indicated in your original submission that the subject bells are non-electric, base metal housing bicycle accessories that operate by

twisting the top portion to produce a ring sound. Therefore, the bells are classifiable within heading 8306, HTSUSA, specifically subheading 8306.10.0000, HTSUSA, which provides, *eo nomine* for bells, gongs and the like.

**HOLDING:**

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

NY I89597, dated January 13, 2003, is hereby modified. Based on the foregoing, pursuant to GRI 1, the subject bells are classifiable in subheading 8306.10.0000, HTSUSA, which provides "bells, gongs and the like, nonelectric, of base metal; . . . bells, gongs and the like, and parts thereof," dutiable at the column one general rate of 5.8 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.

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

