

Bureau of Customs and Border Protection

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 8 2004)

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

SUMMARY: Presented herein are the copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of August 2004. The last notice was published in the CUSTOMS BULLETIN on September 8, 2004.

Corrections or updates may be sent to: Department of Homeland Security, U.S. Customs and Border Protection, Office of Regulations and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: George Frederick McCray, Esq., Chief, Intellectual Property Rights Branch, (202) 572-8710.

Dated: September 24, 2004.

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

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN AUGUST 2004

05/01/2004
05:46:34

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
COP0400088	20040803	20240803	HEAVY DUTY TRANSPORTER SET - ITEM #38560	TOY CENTURY INDUSTRIAL CO. LTD.	N
COP0400089	20040803	20240803	ONLY HEARTS CLUB BOX DESIGN	OHC GROUP LLC	N
COP0400090	20040812	20240812	BRONCO CIGARETTES II	TRADEMARK HOLDINGS CORPORATION	N
COP0400091	20040812	20240812	BVLGARI CATALOG - MATCHES 2003/2004	BULGARI S.P.A	N
COP0400092	20040812	20240812	BRONCO CIGARETTES	TRADEMARK HOLDINGS CORPORATION	N
COP0400093	20040812	20240812	THE BEER MAN ITEM NO. 3387A	MASTER TOYS & NOVELTIES, INC.	N
COP0400094	20040812	20240812	THE BEER MAN ITEM NO. 3387	MASTER TOYS & NOVELTIES, INC.	N
COP0400095	20040816	20240816	DOLPHIN 8" 4 TUBES	GEORGE S. CHEN CORP.	N
COP0400096	20040816	20240816	MOON/STAR, 4-TUBE, 15"	GEORGE S. CHEN CORP.	N
COP0400097	20040816	20240816	DICE POKER CHIP	J.J.T., INC.	N
COP0400098	20040816	20240816	TROPICAL MEMORY COLLECTION - PLUMERIA LEI SERIES	COSMOS JEWELRY LTD.	N
COP0400099	20040816	20240816	SHREK 2 STYLE GUIDE	DREAM WORKS L.L.C.	N
COP0400100	20040819	20240819	ROYAL HEADBAND	EAST-WEST ALOHA CORP.	N
COP0400101	20040823	20240823	ROYAL HEADBAND	EAST-WEST ALOHA CORP.	N
COP0400102	20040823	20240823	ROYAL HEADBAND/HN 24L	EAST-WEST ALOHA CORP.	N
COP0400103	20040823	20240823	ROYAL LEI / L96	EAST-WEST ALOHA CORP.	N
COP0400104	20040823	20240823	ABC LEI / S54	EAST-WEST ALOHA CORP.	N
COP0400105	20040823	20240823	PRINCESS LEI / S56	EAST-WEST ALOHA CORP.	N
COP0400106	20040823	20240823	ALOHA LEI / M52	EAST-WEST ALOHA CORP.	N
COP0400107	20040824	20240824	STYLE GUIDE - KNIGHTS OF THE ZODIAC & SAINT SEIYA	EAST-WEST ALOHA CORP.	N
COP0400108	20040831	20240831	ACE AND JACK POKER CHIP	TOEI ANIMATION CO., LTD.	N
COP0400109	20040831	20240831	D-3977	J.J.T., INC.	N
COP0400110	20040831	20240831	D-3977	DURKAN PATTERNEED CARPET INC.	N
COP0400110	20040831	20240831	D-3671	DURKAN PATTERNEED CARPET INC.	N
SUBTOTAL RECORDATION TYPE 23					
TMK0400659	20040802	20130907	DESIGN ONLY (PINE TREE)	JULIUS SAMANN LTD.	N
TMK0400660	20040802	20130713	DESIGN ONLY (PINE TREE)	JULIUS SAMANN LTD.	N
TMK0400661	20040803	20140419	COLORADO ROCKIES AND DESIGN	COLORADO ROCKIES BASEBALL CLUB	N
TMK0400662	20040803	20130812	BRONCHIPRET	BIDNORICA AG	N
TMK0400663	20040803	20120915	SWISS ARMY	SWISS ARMY BRANDS LTD.	N
TMK0400664	20040803	20130701	44	TRUCK-LITE CO., INC.	N
TMK0400665	20040806	20131216	NEW TRIANGLE DESIGN	L. C. LICENSING INC.	N
TMK0400666	20040812	20130701	HONPOLOMA	INTERNATIONAL IMPORT EXPORT	N
TMK0400667	20040812	20080505	PARASORT	SYNSORT INCORPORATED	N
TMK0400668	20040812	20140419	AUGUST MAX WOMAN	RETAIL BRAND ALLIANCE, INC.	N
TMK0400669	20040812	20130513	BRONCO	TRADEMARK HOLDINGS CORPORATION	N
TMK0400670	20040812	20130715	DESIGN ONLY	TRADEMARK HOLDINGS CORPORATION	N
TMK0400671	20040812	20110327	GT-ONE	TRADEMARK HOLDINGS CORPORATION	N
TMK0400672	20040812	20130826	GT ONE AND DESIGN	TRADEMARK HOLDINGS CORPORATION	N
TMK0400673	20040812	20140203	SILVER	WISTAN CORPORATION	N
TMK0400674	20040812	20140113	ASHLOCK PITTED (CERTIFICATION MARK)	GIANFRANCO FERRE S.P.A.	N
TMK0400675	20040812	20140515	L-MEAT	J & B DISTRIBUTING CO.	N
TMK0400676	20040812	20090202	ANISSA	L.C. LICENSING, INC.	N
TMK0400677	20040812	20140127	DESIGN ONLY	L.C. LICENSING, INC.	N
TMK0400678	20040812	20131223	DESIGN ONLY	L.C. LICENSING, INC.	N
TMK0400679	20040812	20131209	DESIGN ONLY	L.C. LICENSING, INC.	N
TMK0400680	20040812	20130729	BORA BORA	L.C. LICENSING, INC.	N

BUREAU OF CUSTOMS AND BORDER PROTECTION

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
TMK0400682	20040812	20060513	PANASONIC	MATSUSHITA ELECTRIC INDUSTRIAL	N
TMK0400683	20040812	20130204	OUNK	OUNK, INC.	N
TMK0400684	20040812	20060819	TECAN	TIFFANY (NJ) INC.	N
TMK0400685	20040812	20060819	TECAN	TECAN GROUP AG	N
TMK0400686	20040812	20130525	RAPTURE	VICTORIA'S SECRET STORES	N
TMK0400687	20040816	20070101	LIQUID-PLUMER	CLOXOX COMPANY, THE	N
TMK0400688	20040816	20110814	ARMOR ALL	ARMOR ALL PRODUCTS CORPORATION	N
TMK0400689	20040816	20120516	901	BOSE CORPORATION	N
TMK0400690	20040816	20140820	BOSE	BOSE CORPORATION	N
TMK0400691	20040816	20130121	J & CO JACOB & CO. & DESIGN	JACOB & COMPANY WATCHES, INC.	N
TMK0400692	20040816	20130325	JACOB & CO.	JACOB & COMPANY WATCHES, INC.	N
TMK0400693	20040816	20140221	FF	FENDI ADELE S.R.L.	N
TMK0400694	20040816	20130705	FENDI	FENDI ADELE S.R.L.	N
TMK0400695	20040816	20070707	HEP-2000	IMMUNO CONCEPTS N.A. LTD.	N
TMK0400696	20040816	20070707	HEP-2000	IMMUNO CONCEPTS N.A. LTD.	N
TMK0400697	20040816	20130126	MP	MUSICAL PRODUCTIONS, INC.	N
TMK0400698	20040816	20130520	AGA	SALVADOR, GARAY	N
TMK0400699	20040816	20140302	L-19	AUTOMOTIVE RACING PRODUCTS, INC.	N
TMK0400700	20040816	20140504	UNSOLVED MYSTERIES (SERVICE MARK)	COSGORVE-HEURER PRODUCTIONS, INC.	N
TMK0400701	20040816	20140516	COMHAND PERFORMANCE GOLD	COSGORVE-HEURER PRODUCTIONS, INC.	N
TMK0400702	20040816	20140407	SILLETTE	CUSINE-COOKWARE, INC.	N
TMK0400703	20040816	20121112	PEARLOLOGY	THE GILLETTE COMPANY	N
TMK0400704	20040816	20130126	NOBMANDY	SPARKY BEVERAGE CONCEPTS INC	N
TMK0400705	20040816	20120622	HYLOFT	SPARKY BEVERAGE CONCEPTS INC	N
TMK0400706	20040816	20120622	HYLOFT	SPARKY BEVERAGE CONCEPTS INC	N
TMK0400707	20040819	20130822	ON (STYLIZED)	G-ALBE MAC CORPORATION	N
TMK0400708	20040819	20130822	VACIS	HYLOFT USA, LLC	N
TMK0400709	20040819	20131216	VIRTUAL RAIT	LGH-III, LLC	N
TMK0400710	20040819	20131209	SCENT BURST	SCIENCE APPLICATIONS INT'L.	N
TMK0400711	20040819	20131209	MENTADENT	NELSON TECHNOLOGIES	N
TMK0400712	20040819	20140426	STEROX	NELSON TECHNOLOGIES, INC.	N
TMK0400713	20040819	20081201	N NORAC (STYLIZED)	CHURCH & DWIGHT COMPANY	N
TMK0400714	20040819	20100208	MATHE	NORAC, INC.	N
TMK0400715	20040819	20080728	BENOX	NORAC, INC.	N
TMK0400716	20040819	20100111	NOROX	NORAC, INC.	N
TMK0400717	20040819	20090504	FIERCE	NORAC, INC.	N
TMK0400718	20040819	20130506	AF	NORAC, INC.	N
TMK0400719	20040819	20130923	HOLLISTER CO.	A & F TRADEMARK, INC.	N
TMK0400720	20040819	20121112	HOLLISTER CO.	A & F TRADEMARK, INC.	N
TMK0400721	20040819	20131021	AVI-VITE	J.M.H. TRADEMARK, INC.	N
TMK0400722	20040819	20140626	WARMILITE	GIMBORN PET SPECIALTIES, LLC	N
TMK0400723	20040819	20060507	ALTARE	ALTARE INTERNATIONAL CORP.	N
TMK0400724	20040819	20100502	ALTARE	ALTARE INTERNATIONAL CORP.	N
TMK0400725	20040819	20050829	MODENA	ALTARE INTERNATIONAL CORP.	N
TMK0400726	20040819	20140325	SPARK LIZ CLAIRBORNE	ALTARE INTERNATIONAL CORP.	N
TMK0400727	20040819	20130517	SPARK	L.C. LICENSING, INC.	N
TMK0400728	20040819	20130517	MARBO	L.C. LICENSING, INC.	N
TMK0400729	20040819	20130520	CURVE (STYLIZED)	L.C. LICENSING, INC.	N
TMK0400730	20040819	20130620	CRAZY HORSE	L.C. LICENSING, INC.	N
TMK0400731	20040819	20140323	CRAZY HORSE	L.C. LICENSING, INC.	N

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN AUGUST 2004

09/01/2004
09:46:34

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TKR0400732	20040819	20121217	X EXCELLENT	EMPRESS INTERNATIONAL, LTD.	N
TKR0400733	20040819	20120428	ARCTIC GOLD	EMPRESS INTERNATIONAL, LTD.	N
TKR0400734	20040819	20110519	PETITE MISS	IMPERIAL TOY CORPORATION	N
TKR0400735	20040819	20071125	PRETTY COOL, PRETTY CUTE, PRETTY YOU	IMPERIAL TOY CORPORATION	N
TKR0400736	20040819	20090119	CREATURES OF THE WORD	IMPERIAL TOY CORPORATION	N
TKR0400737	20040819	20140121	HALLS (STYLIZED)	CABURY IRELAND LTD.	N
TKR0400738	20040819	20120924	VENEZIA JEANS CLOTHING CO. AND VJ DESIGN	LANE BRYANT, INC.	N
TKR0400739	20040824	20080822	EASY SEAL (STYLIZED & DESIGN)	TRUCK-LITE CO., INC.	N
TKR0400740	20040824	20080901	NYK-77	TRUCK-LITE CO., INC.	N
TKR0400741	20040824	20120402	MANCHESTER UNITED & DESIGN	MANCHESTER UNITED PLC	N
TKR0400742	20040824	20060820	MANCHESTER UNITED FOOTBALL CLUB & DESIGN	MANCHESTER UNITED PLC	N
TKR0400743	20040824	20111218	MQVP	MQVP, INC.	N
TKR0400744	20040824	20130805	AMPAP	MQVP, INC.	N
TKR0400745	20040830	20140918	RONALD MCDONALD DESIGN	MCDONALD'S CORPORATION	N
TKR0400746	20040830	20130308	RONALD MCDONALD (STYLIZED LETTERS)	MCDONALD'S CORPORATION	N
TKR0400747	20040830	20060206	C-22	HAYNES INTERNATIONAL INC.	N
TKR0400748	20040831	20140628	CONFIGURATION OF THE BODY PORTION OF AN ACOUSTIC GUITAR	KAHAN MUSIC CORPORATION	N
TKR0400749	20040831	20150305	ROCKHOPPER	SPECIALIZED BICYCLE COMPONENTS	N
TKR0400750	20040831	20150827	MICRO-V	THE GATE CORPORATION	N
TKR0400751	20040831	20070819	TOPU	J. MONIZ COMPANY	N
TKR0400752	20040831	20100620	MISCELLANEOUS DESIGN (BLUE BSX)	JEFFANY (NJ) INC.	N
TKR0400753	20040831	20100718	DRAMAMINE	PHARMACIA & UPJOHN COMPANY	N
TKR0400754	20040831	20120205	UNICAP	PHARMACIA & UPJOHN COMPANY	N
TKR0400755	20040831	20071206	E.F.T.	WARNER-LAMBERT COMPANY	N
TKR0400756	20040831	20131116	SMARTLOC	SECURE CARE PRODUCTS INC.	N
TKR0400757	20040831	20140814	MCDONALD'S	MCDONALD'S CORPORATION	N
TKR0400758	20040831	20091207	CONVENTO DA VILA	QUALITY WINES MARKETING	N
TKR0400759	20040831	20130729	WEST COUNTY GLOVES	BEVERLY SCHOR	N
TKR0400760	20040831	20091024	TROSDNIC	PRECISION TRADING CORPORATION	N
TKR0400761	20040831	20140405	THREE LINES DESIGN	ALPHA INDUSTRIES INC.	N
TKR0400762	20040831	20140427	ASL GARAYA & DESIGN	KOENIGSEGG-AUTOMOBILE INC.	N
TKR0400763	20040831	20140717	VERNORS (STYLIZED)	ARM CONCENTRATE COMPANY	N
TKR0400764	20040831	20130610	ATL	TRUCK-LITE CO.	N
TKR0400765	20040831	20090606	SEE AND BE SEEN	TRUCK-LITE CO.	N
TKR0400766	20040831	20111211	38	TRUCK-LITE CO.	N
TKR0400767	20040831	20130610	38	TRUCK-LITE CO.	N
TKR0400768	20040831	20130624	88	TRUCK-LITE CO.	N
TKR0400769	20040831	20130920	88	TRUCK-LITE CO.	N
TKR0400770	20040831	20130624	97	TRUCK-LITE CO.	N
TKR0400771	20040831	20130624	97	TRUCK-LITE CO.	N
TKR0400772	20040831	20130624	14	TRUCK-LITE CO.	N
TKR0400773	20040831	20130922	12	TRUCK-LITE CO.	N
TKR0400774	20040831	20090411	SIGNAL-STATE	TRUCK-LITE CO.	N

SUBTOTAL RECORDATION TYPE 115

TOTAL RECORDATIONS ADDED THIS MONTH 138

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

Washington, DC, September 29, 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.*

**REVOCATION AND MODIFICATION OF CLASSIFICATION
LETTERS AND REVOCATION OF TREATMENT RELATING
TO CLASSIFICATION OF CERTAIN TOWELETTES**

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

ACTION: Notice of revocation and modification of ruling letters and revocation of treatment relating to the classification of certain towelettes.

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 and modifying ruling letters relating to the classification of certain towelettes 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 11, 2004 in the CUSTOMS BULLETIN in Volume 38, Number 33. 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 December 12, 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) F88871, dated July 12, 2000, and modify New York Ruling Letter (NY) I86502, dated October 3, 2002, and to revoke any treatment accorded to substantially identical merchandise was published in the August, 11, 2004 CUSTOMS BULLETIN, Volume 38, Number 33. 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should 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 treat-

ment 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 F88871 and modifying NY I86502, and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 967960 and 967959, both which are set forth as attachments 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 27, 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,
HQ 966960
September 27, 2004
CLA-2 RR:CR:TE 966960 TMF
CATEGORY: Classification
TARIFF NO.: 3307.90.00

MS. RAE-ANN COUGHENOUR
GREAT LAKES CUSTOMS BROKERAGE, INC.
4500 Witmer Industrial Estates
Niagara Falls, NY 14305-1386

RE: Revocation of New York Ruling Letter (NY) F88871, dated July 12, 2000; Classification of SunSwipe Sunscreen Towelettes

DEAR MS. COUGHENOUR:

In your letter dated June 28, 2000, you requested a binding ruling on behalf of your client, Norpac Manufacturing, Inc., regarding the classification

of SunSwipe Sunscreen Towelettes. Customs and Border Protection (formerly U.S. Customs Service) issued you New York Ruling Letter (NY) F88871, dated July 12, 2000, which classified the merchandise in subheading 3304.99.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Beauty or make-up preparations and preparations for the care of the skin (other than medicaments) including sunscreen or sun tan preparations; manicure or pedicure preparations: Other."

We have reviewed this decision and have determined it to be in error. Therefore, this ruling is revoking NY F88871 as it pertains to the SunSwipe Sunscreen Towelettes.

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 F88871 was published on August 11, 2004, in Vol. 38, No. 33 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

FACTS:

The description of the merchandise is taken from NY F88871, *supra*, which reads as follows:

Samples of the SunSwipe Sunscreen Towelette were submitted with your inquiry. The product consists of a towelette impregnated with sunscreen and aloe vera packed in a retail foil package. The towelette is applied to the body for sunscreen protection. The towelettes are marketed in various SPF grades.

ISSUE:

Whether the subject SunSwipe Sunscreen Towelettes are classified as sunscreen preparations of heading 3304, or cosmetic preparations, not elsewhere specified or included of heading 3307, within the meaning of Chapter 33, Note 4, 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). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, 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 interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

3304	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations:
------	--

Other:

Other:

3304.99.50	Other
3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
3307.20.00	Personal deodorants and antiperspirants
3307.90.00	Other
5603	Nonwovens, whether or not impregnated, coated, covered or laminated:
	Of man-made filaments:
5603.11.00	Weighing not more than 25 g/m ²

Note 1 to Chapter 56, HTSUS excludes from this chapter:

(a) Wadding, felt or nonwovens, impregnated, coated or covered with substances or preparations (for example, perfumes or cosmetics of chapter 33, soaps or detergents of heading 3401 . . .) where the textile material is present merely as a carrying medium. . . .

In this instance, we find the above Note precludes the classification of the subject towelettes within Chapter 56 because the textile pad's sole function is to serve as a carrier medium for the sunscreen and aloe vera.

In NY F88871, CBP originally classified the goods in heading 3304, which specifically provides for sunscreen and sun tan preparations. We refer to Explanatory Note 33.04(A), which states, "sunscreen or sun tan preparations are also included." We note that in lieu of Chapter 56 or heading 3307, CBP has classified towelettes impregnated with cleaning solutions in Chapter 34. See Headquarters Ruling Letter (HQ) 966800, dated February 3, 2004, referencing, in pertinent part to five New York rulings that classified other towelettes impregnated with cleaning solutions used to clean the surface of the skin in Chapter 34. These rulings are: NY 897538, dated May 27, 1994 (which classified paper towelettes used to clean hands), NY J87145, dated September 2, 2003, and NY F88830, dated August 18, 2000 (both which classified baby wipes that are used to clean baby body parts), NY 810044, dated June 20, 1995 (which classified Soft Wipe Tissues containing sodium laureth sulfate, a cleanser, in heading 3401); and NY J87912, dated September 12, 2003, which classified antiseptic towelettes used to clean hands in heading 3402, HTSUS).

However, in this instance, the subject towelettes are not skin surfactant cleaners of Chapter 34, nor simply nonwovens of heading 5603, but nonwoven cosmetic towelettes. We refer you to Note 4 for Chapter 33, HTSUS, which defines the pertinent language in heading 3307, by stating:

The expression "perfumery, cosmetic or toilet preparations" in heading 3307 applies, *inter alia*, to the following products: scented sachets; odoriferous preparations which operate by burning; perfumed papers and

papers impregnated or coated with cosmetics; contact lens or artificial eye solutions; **wadding, felt and nonwovens, impregnated, coated or covered with perfume or cosmetics**; animal toilet preparations. [*Emphasis added in bold.*]

Further, EN 33.07(V) states, in pertinent part, that this heading covers “wadding, felt and nonwovens impregnated, coated or covered with perfume or cosmetics.”

We note that the Tariff and the Explanatory Notes do not define the term “cosmetic” and we refer to the Encyclopaedia Britannica (Online), which defines the term as:

any of several preparations (excluding soap) that are applied to the human body for beautifying, preserving, or altering the appearance or for cleansing, colouring, conditioning, or protecting the skin, hair, nails, lips, eyes, or teeth.

The two headings, 3304 and 3307, are distinguishable with regard to the instant towelettes’ classification. Heading 3304 provides in general for skin and makeup preparations. Heading 3307 specifically includes nonwovens that are impregnated with perfumes or cosmetics. In this instance, the subject towelettes are more completely described in heading 3307 and should be reclassified therein. *See* HQ 085809, dated November 7, 1989, classifying a nonwoven wet tissue paper impregnated with fragrance and a cationic detergent for use in removing make-up and other functions relating to cleaning the skin within heading 3307. *See also* NY D85336, dated December 11, 1998, classifying a Fria Disposable Moist Towelette used to refresh the hands and face with a light perfume fragrance in heading 3307.

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 F88871, dated July 12, 2000, is hereby revoked. The SunSwipe Sunscreen Towelettes are classified in subheading 3307.90.00, HTSUS, as cosmetic or toilet preparations, not elsewhere specified or included, other. The column one duty rate is 5.4 percent *ad valorem*.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966959
September 27, 2004
CLA-2 RR:CR:TE 966959 TMF
CATEGORY: Classification
TARIFF NO.: 3307.90.00

MR. BRIAN KAVANAUGH
DERINGER LOGISTICS CONSULTING GROUP
1 Lincoln Blvd.
Suite 225
Rouses Point, NY 12979

RE: Modification of New York Ruling Letter (NY) I86502, dated October 3, 2002; Classification of Nail Polish Remover Pads

DEAR MR. KAVANAUGH:

In your letter dated September 18, 2002, you requested, on behalf of your client Devonshire Industries, a binding tariff ruling concerning lens cleaning wipes and nail polish remover pads. Customs and Border Protection (formerly U.S. Customs Service) issued you New York Ruling Letter (NY) I86502, dated October 3, 2002, which classified the nail polish remover pads in subheading 3304.30.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for manicure or pedicure preparations.

We have reviewed this decision and have determined it to be in error. Therefore, this ruling modifies NY I86502 as it pertains to the nail polish remover pads.

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 I86502 was published on August 11, 2004, in Vol. 38, No. 33 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

FACTS:

The description of the merchandise is taken from NY I86502, *supra*, which reads as follows:

The nail polish remover pads are composed of a non-woven 100% acrylic felt material. The pads are impregnated with acetone, isopropyl alcohol, water, lanolin and a fragrance. The pads, individually packaged in foil pouches, will be sold for retail sale in various sizes.

ISSUE:

Whether the subject nail polish remover pads are classified as manicure or pedicure preparations of heading 3304, or cosmetic preparations, not elsewhere specified or included of heading 3307, within the meaning of Chapter 33.

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). The systematic detail of the HTSUS is such that most goods are

classified by application of GRI 1, that is, 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 interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

3304 Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations:

Other:

Other:

3304.9950 Other

3307 Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:

3307.20.00 Personal deodorants and antiperspirants

3307.90.00 Other

5603 Nonwovens, whether or not impregnated, coated, covered or laminated:

Of man-made filaments:

5603.11.00 Weighing not more than 25 g/m²

Note 1 to Chapter 56, HTSUS, excludes from this chapter:

(a) Wadding, felt or nonwovens, impregnated, coated or covered with substances or preparations (for example, perfumes or cosmetics of chapter 33, soaps or detergents of heading 3401 . . .) where the textile material is present merely as a carrying medium. . . .

In this instance, we find the above Note precludes the classification of the subject pads within Chapter 56 because their sole function is to serve as a carrier medium for nail polish remover.

In NY 186502, CBP originally classified the goods in heading 3304, which specifically provides for cosmetic preparation. We refer to Explanatory Note 33.04(B), which states, "this part covers . . . nail varnish removers . . . and other preparations for use in manicure or pedicure." We note that in lieu of Chapter 56 or heading 3307, CBP has classified towelettes impregnated

with cleaning solutions in Chapter 34. *See* Headquarters Ruling Letter (HQ) 966800, dated February 3, 2004, referencing, in pertinent part to five New York rulings that classified other towelettes impregnated with cleaning solutions used to clean the surface of the skin in Chapter 34. These rulings are: NY 897538, dated May 27, 1994 (which classified paper towelettes used to clean hands), NY J87145, dated September 2, 2003, and NY F88830, dated August 18, 2000 (both which classified baby wipes that are used to clean baby body parts), NY 810044, dated June 20, 1995 (which classified Soft Wipe Tissues containing sodium laureth sulfate, a cleanser, in heading 3401); and NY J87912, dated September 12, 2003, which classified antiseptic towelettes used to clean hands in heading 3402, HTSUS).

However, in this instance, the subject nail polish remover pads are not skin cleaning towelettes of Chapter 34 (as in the rulings previously cited), nor simply nonwovens of heading 5603, but nonwoven cosmetic pads impregnated with nail polish remover. We refer you to Note 4 for Chapter 33, HTSUS, which defines the pertinent language in heading 3307, by stating:

The expression “perfumery, cosmetic or toilet preparations” in heading 3307 applies, *inter alia*, to the following products: scented sachets; odoriferous preparations which operate by burning; perfumed papers and **papers impregnated or coated with cosmetics**; contact lens or artificial eye solutions; **wadding, felt and nonwovens, impregnated, coated or covered with perfume or cosmetics**; animal toilet preparations. [*Emphasis added in bold.*]

Further, EN 33.07(V) states, in pertinent part, that this heading covers “wadding, felt and nonwovens impregnated, coated or covered with perfume or cosmetics.”

We note that the Tariff and the Explanatory Notes do not define the term “cosmetic” and we refer to the Encyclopaedia Britannica (Online), which defines the term as:

any of several preparations (excluding soap) that are applied to the human body for beautifying, preserving, or altering the appearance or for cleansing, colouring, conditioning, or protecting the skin, hair, nails, lips, eyes, or teeth.

The two headings, 3304 and 3307, are distinguishable with regard to the instant pads’ classification. Heading 3304 provides in general for skin and makeup preparations. Heading 3307 specifically includes nonwovens that are impregnated with perfumes or cosmetics. In this instance, the subject pads are more completely described in heading 3307 and should be reclassified therein. *See* HQ 085809, dated November 7, 1989, classifying a nonwoven wet tissue paper impregnated with fragrance and a cationic detergent for use in removing make-up and other functions relating to cleaning the skin within heading 3307. *See also* NY D85336, dated December 11, 1998, classifying a Fria Disposable Moist Towelette used to refresh the hands and face with a light perfume fragrance in heading 3307.

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 186502, dated October 3, 2002, is hereby modified. The nail polish remover pads are classified in subheading 3307.90.00, HTSUS, as cosmetic or

toilet preparations, not elsewhere specified or included, other. The column one duty rate is 5.4 percent *ad valorem*.

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

19 CFR PART 177

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF CALIBRATION LAMPS

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 calibration lamps.

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 the Bureau of Customs and Border Protection ("CBP") is revoking a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of calibration lamps and revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* on August 18, 2004. No comments were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 12, 2004.

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 commu-

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on August 18, 2004, in the *Customs Bulletin* Vol. 38, No. 34, proposing to revoke NY 802823, dated October 31, 1994. This ruling pertained to the tariff classification of calibration lamps. No comments were received in response to this notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, 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 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 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 their agents for importations of merchandise subsequent to the effective date of this final notice.

In NY 802823, dated October 31, 1994, CBP found that a krypton lamp and a deuterium lamp used as calibration lamps in Space Telescope Image Spectrograph for the Hubble Space Telescope were classified in subheading 9031.90.5500, HTSUSA, as parts and accessories of other optical measuring or checking instruments and appliances, other.

CBP has reviewed the matter and determined that the correct classification of the calibration lamps is in subheading 8539.49.0040,

HTSUSA, which provides for electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; parts thereof; ultraviolet or infrared lamps; arc lamps; other; ultraviolet lamps.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY 802032, 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) 966938, as set forth in the 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.

Dated: September 27, 2004

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966938
September 27, 2004
CLA-2 RR:CR:GC 966938 KBR
CATEGORY: Classification
TARIFF NO.: 8539.49.0040

JIM MASON
BALL AEROSPACE AND COMMUNICATIONS GROUP
P.O. Box 1062
Boulder, CO 80306-1062

RE: Reconsideration of NY 802823; Calibration Lamps

DEAR MR. MASON:

This is in reference to New York Ruling Letter (NY) 802823, issued to you by the Customs National Commodity Specialist Division, New York, on October 31, 1994. That ruling concerned the classification of two calibration lamps [one krypton lamp and one deuterium lamp] designed for use with the Hubble Space Telescope, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed NY 802823 and determined that the classification provided for the calibration lamps is incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on August 18, 2004, in Vol. 38, No. 34 of the *Customs Bulletin*, proposing to revoke NY 802823. No comments were received in response to this notice.

FACTS:

NY 802823 concerned two calibration lamps, one krypton lamp and one deuterium lamp, designed for use with the Hubble Space Telescope. The Space Telescope Image Spectrograph (STIS) was being developed for installation in the Hubble Space Telescope during a 1997 servicing mission. The STIS has the ability to calibrate itself during down time of the Hubble Space Telescope through a series of calibration subsystems installed into the STIS. The calibration lamps are part of the calibration subsystems. The subsystems contain all of the optics and the mechanical systems for relaying the ultraviolet radiation into the instrument for calibration. None of the optics are in the lamps themselves.

The krypton and deuterium lamps allow the Hubble Space Telescope to be calibrated from within during the times when the telescope is shut down, rather than using a known light source in space. The lamps provide illumination over continuous wavelength bands in the ultraviolet range. The krypton lamp's emissions cover the wavelengths from 130 nm to 160 nm. The deuterium lamp's emissions cover the wavelengths from 160 nm to 310 nm.

Both the krypton lamp and the deuterium lamp are gas-filled bulbs and electronics, mounted in an aluminum tube. An RF electronics circuit excites the gas in the bulb forming the gas into a plasma. The deuterium lamp also requires a heater and heater circuit which heats a pellet that absorbs the deuterium when the lamp is not operating. An optional trigger circuit and high voltage transformer were to be included in the krypton lamp if it was difficult to start. Each lamp is a self contained unit, totally enclosed within its own glass envelope. Therefore, each calibration lamp retains its own identity even though inserted into the STIS.

In NY 802823, it was determined that the krypton lamp and deuterium lamp were classified in subheading 9031.90.5500, HTSUSA, which provides for parts and accessories of other optical measuring or checking instruments and appliances, other.

We have reviewed NY 802823 and determined that the classification of the krypton and deuterium calibration lamps is incorrect. This ruling sets forth the correct classification.

ISSUE:

What is the classification of the subject krypton and deuterium calibration lamps under the HTSUSA?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). Under GRI 1, merchandise is classifiable according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, Customs and Border Protection ("CBP") looks to the Harmonized Commodity Description and Coding System Explanatory Notes (ENs). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUSA. It is CBP 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:

8539	Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; parts thereof:
	Ultraviolet or infrared lamps; arc lamps:
8539.49.00	Other
8539.49.0040	Ultraviolet lamps
	* * * * *
9031	Measuring or checking instruments, appliances and machines, not specified or included elsewhere in this chapter; profile projectors; parts and accessories thereof:
9031.90	Parts and accessories:
	Of other optical instruments and appliances, other than test benches:
9031.90.5800	Other

One of the headings under consideration is 8539, HTSUSA, which includes ultraviolet lamps. The ENs for heading 8539 describe "ultra-violet lamps" as:

used for medical, laboratory, germicidal or other purposes. They usually consist of a fused quartz tube containing mercury; they are sometimes enclosed in an outer envelope of glass. Some are known as black light lamps (e.g., those used for theatrical purposes).

The instant calibration lamps produce ultraviolet light for use in calibrating the STIS on the Hubble Space Telescope which clearly falls within this EN description of an ultraviolet lamp of heading 8539, HTSUSA.

In NY 802823, CBP found that the calibration lamp was classified in heading 9031, HTSUSA, as a part and accessory of other optical measuring or checking instruments and appliances. However, in considering heading 9031, HTSUSA, we must first consider the relevant Section and Chapter Notes. Note 2(a) to chapter 90 states:

Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8485, 8548 or 9033) are in all cases to be classified in their respective headings

Note 2(b) to chapter 90 states:

Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading (including a machine, instrument or apparatus of heading 9010, 9013, or 9031) are to be classified with the machines, instruments or apparatus of that kind

See also similar language in the Section Notes for headings 8539 at Section XVI Note 2(a) and (b). The ENs for Section XVI at General, (II) Parts (Section Note 2), states that "parts which in themselves constitute an article covered by a heading of this Section . . . ; these are in all cases classified in

their own appropriate heading even if specially designed to work as part of a specific machine.” The EN then specifically lists at (14) Lamps of heading 85.39. The ENs for chapter 90 at General, (III) Parts and Accessories (Chapter Note 2), (1), gives similar guidance, stating that “[f]or example, . . . lamps . . . remain in Chapter 85. . . .” Applying Note 2(a), to the instant calibration lamps will classify the articles in their own right, not as a part or accessory.

The EN language for Section XVI Note 2 was cited by the court in *Nidec Corp. v. United States*, 861 F. Supp. 136 (CIT 1994), *aff’d*, 68 F.3d 1333 (Fed. Cir. 1995). The court, applying the EN for Section XVI Note 2, determined that if a good can be classified in its own heading in accordance with Legal Note 2(a), then classification as a part under Legal Note 2(b) is inappropriate. *See also* HQ 962946 (May 1, 2000), HQ 952026 (July 23, 1992), HQ 963219 (February 5, 2001). Therefore, applying the court’s reasoning to the instant calibration lamps, we apply Note 2(a) to chapter 90, which directs classification of the articles in their own appropriate heading, heading 8539, HTSUSA, and not as a part or accessory.

In this case, as discussed above, the calibration lamps are classified pursuant to chapter 90, Note 2(a) in heading 8539, HTSUSA, as lamps. Therefore, classification as a part of measuring or checking instruments, appliances and machines, not specified or included elsewhere in chapter 90, under chapter 90, Note 2(b) is precluded.

HOLDING:

By application of Note 2(a) to chapter 90, the calibration lamps are classified in heading 8539, HTSUSA. The krypton and deuterium ultraviolet lamps intended for use in the STIS for the Hubble Space Telescope are specifically provided for in subheading 8539.49.0040, HTSUSA, as electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; parts thereof; ultraviolet or infrared lamps; arc lamps; other; ultraviolet lamps. The 2004 column one, general rate of duty rate is 2.4% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY 802823 dated October 31, 1994, is **REVOKED**. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after publication in the *Customs Bulletin*.

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

19 CFR PART 177

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF AERO-DERIVATIVE GAS TURBINES

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

ACTION: Notice of revocation of ruling letter, and revocation of treatment relating to tariff classification of aero-derivative gas turbines.

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 is revoking a ruling letter pertaining to the tariff classification of aero-derivative gas turbines under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP also is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin on July 21, 2004.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 12, 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 CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify

and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the Customs Bulletin on July 21, 2004, proposing to revoke a ruling letter pertaining to the classification of aero-derivative gas turbines. 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 CBP during this 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 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. 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 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), CBP is revoking NY H81222 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 967102. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. HQ 967102 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: September 27, 2004

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

Attachment

HQ 967102
September 27, 2004
CLA-2 RR:CR:GC 967102 NSH
CATEGORY: Classification
TARIFF NO.: 8411.82.8000

MR. JOSEPH P. BRICK
KPMG LLP
CHARTERED ACCOUNTANTS
Suite 3300 Commerce Court West
PO Box 31 Stn Commerce Court
Toronto ON M5L 1B2

RE: NY H81222 revoked; aero-derivative gas turbines

DEAR MR. BRICK:

This is in response to an internal request for reconsideration of NY H81222, dated May 31, 2001, on the classification of two gas turbines under the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise was classified under subheading 8411.12.80, HTSUS. However, in researching a related issue, Customs and Border Protection (CBP) determined that NY H81222 should be revoked. This ruling letter 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 H81222, as described below, was published in the Customs Bulletin on July 21, 2004. No comments were received in response to the notice.

FACTS:

The merchandise at issue are the Rolls-Royce RB-211 and Rolls-Royce Avon gas turbines. Both engines, although originally designed as turbojets to provide motive power for aircraft, have been adapted for industrial use, thereby putting them in a class of engine referred to as "aero-derivative," a term of art indicative of their original design purpose.

In the case of the Rolls-Royce RB-211, the bypass fan and fan turbines have been removed, with the resulting product being a twin spool gas generator capable of generating power between 25,200 kilowatts and 44,500 kilowatts, depending on what type of use the engine is put to. Primarily, it is used for a variety of power generation and mechanical drive applications. The Rolls-Royce Avon has been reconfigured and matched with either the RT48 or RT56 power turbine, making it well suited for a variety of power generation and mechanical drive applications. Depending on what type of use the Rolls-Royce Avon is put to, it is capable of generating power between 14,672 kilowatts and 21,000 kilowatts. Because of their adapted designs, these aero-derivative gas turbines are now incapable of providing motive power for aircraft.

In NY H81222, CBP classified both gas turbines under subheading 8411.12.80, HTSUS, which provides for "Turbojets, turbopropellers and other gas turbines and parts thereof: Turbojets: Of a thrust exceeding 25 kN: Other."

ISSUE:

Whether the Rolls-Royce RB-211 and Rolls-Royce Avon gas turbines are

turbojets of subheading 8411.12.80, HTSUS, or other gas turbines of subheading 8411.82.80, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the 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.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. The ENs, although neither dispositive or legally binding, facilitate classification by providing 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 HTSUS provisions under consideration are as follows:

8411 Turbojets, turbopropellers and other gas turbines, and parts thereof:

Turbojets:

8411.12 Of a thrust exceeding 25kN:

8411.12.80 Other

* * * * *

Other gas turbines:

8411.82 Of a power exceeding 5,000 kW:

8411.82.80 Other

In NY H81222, CBP held that the Rolls-Royce RB-211 and Rolls-Royce Avon gas turbines at issue therein, recognized aircraft engines having been adapted for industrial use (aero-derivative), were classified as turbojets under subheading 8411.12.80, HTSUS. Having been adapted for industrial use, these engines are no longer capable of providing motive power to an aircraft. However, CBP classified them as turbojets, the classification of these engines in an unaltered state, in keeping with the position that an aero-derivative gas turbine is essentially still a turbojet. Heading 8411, HTSUS, covers three types of engines: Turbojets; Turbopropellers; and Other Gas Turbines. EN 84.11 parallels the heading listings for these three engine types and states in pertinent part as follows:

This heading covers **turbo-jets, turbo-propellers and other gas turbines.**

. . .

(A) **Turbo-Jets**

A turbo-jet consists of a compressor, a combustion system, a turbine and a nozzle, which is a convergent duct placed in the exhaust pipe. The hot pressurized gas exiting from the turbine is converted to a high velocity gas stream by the nozzle. The reaction of this gas stream acting on the engine provides the motive force which may be used to power aircraft. In its simplest form the compressor and turbine are accommodated on a single shaft. In more complex designs the compressor is made in two

parts (a two spool compressor) in which the spool of each part is driven by its own turbine through concentric shafting. Another variation is to add a ducted fan usually at the inlet to the compressor and drive this either by a third turbine or connect it to the first compressor spool. The fan acts in the nature of a ducted propeller, most of its output bypassing the compressor and turbine and joining the exhaust jet to provide extra thrust. This version is sometimes called a "bypass fan jet."

...

(B) Turbo-Propellers

Such engines are similar to turbo-jets, but have a further turbine downstream of the compressor turbine, which is coupled to a conventional propeller such as is used on piston engined aircraft. This latter turbine is sometimes referred to as a "free turbine," meaning that it is not mechanically coupled to the compressor and compressor turbine shaft. Thus most of the hot pressurized gas leaving the compressor turbine is converted into shaft power by the free turbine instead of being expanded in a nozzle as is the case in turbo-jets. In some cases, the gases leaving the free turbine may be expanded in a nozzle to provide auxiliary jet power and assist the propeller.

(C) Other Gas Turbines

This group includes industrial gas-turbine units which are either specifically designed for industrial use or adapt turbo-jets or turbo-propeller units for uses other than providing motive power for aircraft.

There are two types of cycles:

- (1) The simple cycle, in which air is ingested and compressed by the compressor, heated in the combustion system and passed through the turbine, finally exhausting to the atmosphere.
- (2) The regenerative cycle, in which air is ingested, compressed and passed through the air pipes of a regenerator. The air is pre-heated by the turbine exhaust and is then passed to the combustion system where it is further heated by the addition of fuel. The air/gas mixture passes through the turbine and is exhausted through the hot gas side of the regenerator and finally to the atmosphere.

There are two types of designs:

- (a) The single-shaft gas turbine unit, in which the compressor and turbine are built on a single shaft, the turbine providing power to rotate the compressor and to drive rotating machinery through a coupling. This type of drive is most effective for constant speed applications such as electrical power generation.
- (b) The two-shaft gas turbine unit, in which the compressor, combustion system and compressor turbine are accommodated in one unit generally called a gas generator, whilst a second turbine on a separate shaft receives the heated and pressurized gas from the exhaust of the gas generator. This second turbine known as the power turbine is coupled to a driven unit, such as a compressor or pump. Two-shaft gas turbines are normally applied where load demand variations require a range of power and rotational speed from the gas turbine

These gas turbines are used for marine craft and locomotives, for electrical power generation, and for mechanical drives in the oil and gas, pipeline and petrochemical industries.

We note initially that each type of engine designated under heading 8411, HTSUS, is considered to be a "Gas turbine," but it is the specific construction and use of the gas turbine that determines whether that model is classified as a "Turbojet," "Turboprop" or "Other Gas Turbine."

As in H81222, CBP had previously classified aero-derivative gas turbines under subheadings 8411.11/12, HTSUS, and 8411.21/22, HTSUS, in keeping with the position that, notwithstanding certain adaptations, they were still described under the *eo nomine* provisions for turbojets and turbopropellers, respectively. This prior approach to classifying such merchandise was followed despite the fact that, in their altered state for industrial use, aero-derivative gas turbines are no longer capable of providing motive power to aircraft. However, it should be noted that an *eo nomine* provision is one which describes a commodity by a specific name, usually one well known to commerce, i.e. "turbojets" or "turbopropellers." Ordinarily, use is not a criterion in determining whether merchandise is included within an *eo nomine* provision, but use may be considered where common and commercial meaning of the article at the time the tariff schedule was drafted included references to use. See *Admiral Div. Of Magic Chef, Inc. v. United States*, 754 F. Supp. 881 (1990) and *United States v. Quon Quon Co.*, 46 C.C.P.A. 70, 73, C.A.D. 699 (1959). In considering the scope of the *eo nomine* provisions at issue, EN 84.11 states that turbojets and turbopropellers specifically described in subheadings 8411.11/12 and 8411.21/22, HTSUS, may be used to power aircraft. In contrast, other gas turbines of subheading 8411.81/82, HTSUS, are described as including industrial gas-turbine units which are either specifically designed for industrial use or else adapt turbo-jets or turbo-propeller units for uses other than providing motive power for aircraft.

Recent Customs rulings further demonstrate that aero-derivative gas turbines are not defined by the *eo nomine* provisions for turbojets or turbopropellers because those designations are reserved for gas turbines that provide motive power for aircraft. In HQ 966934, dated May 6, 2004, CBP ruled that aero-derivative gas turbines for industrial use and gas turbines designed specifically for industrial use are in all cases classified under subheading 8411.81/82, HTSUS. This position is further supported in NY J84449, dated June 2, 2003, NY J84454, dated June 2, 2003 and NY J84459, dated June 2, 2003, wherein engine parts of an aero-derivative gas turbine were classified under subheading 8411.99.9060, as parts for "nonaircraft gas turbines."

The above analysis and cited rulings support the finding by CBP that turbojet and turbopropeller gas turbines, which provide motive power for aircraft, are classified under subheadings 8411.11/12, HTSUS, and 8411.21/22, HTSUS, respectively. In contrast, both aero-derivative gas turbines and gas turbines designed specifically for industrial use, and incapable of providing motive power to aircraft, form the class or kind of gas turbine that is considered a turboshaft engine and which comprise the "Other gas turbine" subheading group of 8411.81/82, HTSUS. In addition, and to further assist in classifying gas turbines, it is equally apparent that the power output of turbojet engines is measured in pound thrust, or so-called kilonewtons, while the power output of turboprop and turboshaft engines is normally measured in kilowatts. This expression of power is usually indicative of the type of use

to which the engine is utilized. Turbojet engines are typically used on high-speed and commercial aircraft wherein compressed air and gas are exhausted from the engine, providing the thrust that powers the aircraft. In contrast, turboprop engines operate on low-speed, low-altitude aircraft, the exhaust flow from the compressor turbine being used to power a conventional propeller as opposed to exhausting into the atmosphere to provide thrust. And, turboshaft engines are typically used in industrial and marine applications, being derived from aircraft engines (aero-derivative), designed specifically for industry, or else used to power a helicopter or boat propeller.

In considering NY H81222, it seems apparent that the analysis used by CBP was consistent with the previous approach to gas turbine classification. Both the Rolls-Royce RB-211 and Rolls-Royce Avon gas turbines at issue have been adapted from their original designs for exclusive industrial use. In practical terms, this entailed removing the bypass fan and fan turbines of the Rolls-Royce RB-211 so that exhaust flow could be routed to another turbine that in turn generates power. In the case of the Rolls-Royce Avon, the engine has been reconfigured and matched with a separate power turbine, again for the purpose of generating power; in their adapted form, each is capable of generating power in excess of 5,000 kilowatts. In view of the foregoing, they are both aero-derivative engines and therefore classified under subheading 8411.82.80, HTSUS, as "Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power exceeding 5,000 kW: Other." It should also be noted that in March 2004, CBP issued an Informed Compliance Publication (ICP) entitled "Turbojets, Turbopropellers and Other Gas Turbines, (HTSUS) and Parts Thereof." Although an ICP is published for general information purposes only and therefore cannot serve as the sole basis upon which an importer claims, or CBP issues, a classification, the ICP nevertheless reflects the current CBP position on this merchandise.

HOLDING:

The Rolls-Royce RB-211 and Rolls-Royce Avon gas turbines are classified under subheading 8411.82.8000, Harmonized Tariff Schedule of the United States Annotated, as "Turbojets, turbopropellers and other gas turbines, and parts thereof: Other gas turbines: Of a power exceeding 5,000 kW: Other." The general column one rate of duty is 2.5 percent *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.

EFFECT ON OTHER RULINGS:

NY H81222 is REVOKED.

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

19 CFR PART 177**PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF PLASTIC LIGHT CLIPS AND HOOKS**

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

ACTION: Notice of proposed revocation of ruling letter, and revocation of treatment relating to tariff classification of plastic light clips and hooks.

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 revoke a ruling letter pertaining to the tariff classification of plastic light clips and hooks under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP also intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before November 12, 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. Comments submitted may be inspected at Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

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 obli-

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the classification of plastic light clips and hooks. Although in this notice CBP is specifically referring to NY F81404, 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, as amended (19 U.S.C. 1625(c)(2)), CBP 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. 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 its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY F81404, dated January 21, 2000, set forth as Attachment A to this document, CBP classified plastic light clips and hooks under subheading 3926.90.9880, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), as: "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other."

It is now the CBP position that the plastic light clips and hooks are classified under subheading 3924.90.5500, HTSUSA, as "Tableware, kitchenware, other household articles and toilet articles, of plastics: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY F81404 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 967292, which is set forth as 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, we will give consideration to any written comments timely received.

DATED: September 27, 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 F81404
January 21, 2000
CLA-2-39:RR:NC:SP:221 F81404
CATEGORY: Classification
TARIFF NO.: 3926.90.9880

MR. R. KEVIN WILLIAMS
O'DONNELL & WILLIAMS
20 North Wacker Drive Suite 1416
Chicago, Illinois 60606

RE: The tariff classification of "EZ Light" clips and hooks from China.

DEAR MR. WILLIAMS:

In your letter dated December 23, 1999, on behalf of Santa's Best, you requested a tariff classification ruling.

Samples were provided with your letter. The merchandise consists of three types of plastic clips and hooks: EZ Light Gutter Hooks, EZ Light Universal Icicle Light Clips and EZ Light Universal Multi-Position Light Clips. These hooks and clips are used to attach Christmas lights to the gutters and shingles of a house. The fasteners either slide under the shingles or clip onto the gutters. They are not permanently attached to the building. The light strings either slide or snap into the fasteners for temporary installation. They are not permanently attached to the hooks or clips. The samples are being returned as you requested.

You have suggested classification in subheading 9405.92.00, HTS, which provides for lamps and lighting fittings including searchlights and spotlights and parts thereof. However, the EZ Light clips and hooks are not clas-

sified as parts because they are not integral, constituent, or components parts, without which the lights could not function.

The applicable subheading for the EZ Light hooks and clips will be 3926.90.9880, Harmonized Tariff Schedule of the United States (HTS), which provides for other articles of plastics, other. The rate of duty will be 5.3 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 Joan Mazzola at 212-637-7034.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967292
CLA-2 RR:CR:GC 967292 NSH
CATEGORY: Classification
TARIFF NO.: 3924.90.5500

MR. R. KEVIN WILLIAMS
O'DONNELL & WILLIAMS
20 North Wacker Drive
Suite 1416
Chicago, IL 60606

RE: Plastic light clips and hooks

DEAR MR. WILLIAMS:

This is in response to an internal request for reconsideration of NY F81404, dated January 21, 2000, on the classification of plastic light clips and hooks under the Harmonized Tariff Schedule of the United States (HTSUS). The merchandise, three varieties of plastic clips and hooks, was classified under subheading 3926.90.98, HTSUS. However, in researching a related issue, Customs and Border Protection (CBP) determined that NY F81404 should be revoked. This ruling letter sets forth the correct classification of the subject merchandise.

FACTS:

In NY F81404, CBP described the merchandise as follow:

The merchandise consists of three types of plastic clips and hooks: EZ Light Gutter Hooks, EZ Light Universal Icicle Light Clips and EZ Light Universal Multi-Position Light Clips. These hooks and clips are used to attach Christmas lights to the gutters and shingles of a house. The fasteners either slide under the shingles or clip onto the gutters. The [sic]

are not permanently attached to the building. The light strings either slide or snap into the fasteners for temporary installation. They are not permanently attached to the hooks or clips.

ISSUE:

Whether the subject plastic light clips are classified under subheading 3924.90.55, HTSUS, as “Tableware, kitchenware, other household articles and toilet articles, of plastics: Other: Other,” or under subheading 3926.90.98, HTSUS, as “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.”

LAW AND ANALYSIS:

Merchandise is classifiable under the 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.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. The ENs, although neither dispositive nor legally binding, facilitate classification by providing 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 HTSUS provisions under consideration are as follows:

3924	Tableware, kitchenware, other household articles and toilet articles, of plastics:
3924.90	Other:
3924.90.55	Other
*	* * * *
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other

Heading 3926, HTSUS, is a basket provision, providing as it does for “Other articles of plastics and articles of other materials of headings 3901 to 3914.”

EN 39.26 additionally states, in pertinent part:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14.

Therefore, before heading 3926, HTSUS, is considered, it must first be determined if heading 3924, HTSUS, provides for the instant merchandise.

Customs and Border Protection (CBP) notes that several recent rulings classified merchandise substantially similar to the instant products under subheading 3924.90.55, HTSUS. *See* HQ 967223, dated August 31, 2004 (plastic clips designed to secure C7, C9, icicle style lights, and other miniature electrical lights onto exterior parts of the home, such as roofs and gut-

ters), NY J86568, dated July 28, 2003 (gutter hooks and sliding hooks used to secure festive lights to a house and not designed for permanent installation), NY I84534, dated July 29, 2002 (plastic light clips used to temporarily hang C7, C9, or miniature electric bulbs, onto the gutters and shingles of a home, particularly during Christmas time; plastic icicle light clips designed to temporarily secure icicle light strands onto gutters and shingles), NY I87756, dated November 7, 2002 (plastic gutter grip clips and eaves grip clips used to hang lights and decorations in and around the home on gutters, eaves or trees), NY I83980, dated July 29, 2002 (plastic light clips with suction cups, used to temporarily mount miniature lights by securing the light to the clip and attaching the suction cup onto a smooth plastic or glass surface), NY F89828, dated August 2, 2000 (plastic clips used to attach miniature electric lights to shingles and gutters; icicle light clips used to attach miniature light sets to shingles and gutters; plastic garland ties used to tie garlands in and around the home during the Christmas season) and NY F86823, dated June 7, 2000 (icicle light clips used to affix festive light sets to shingles and gutters; plastic gutter hooks used to affix festive light sets to a spouting gutter).

The cited rulings classified their respective merchandise within heading 3924, HTSUS, because they were considered plastic household articles as a result of their use for securing various types of electric lights to a house or other residential structure. These types of plastic clips are provided for in the text to heading 3924, HTSUS, which specifically mentions "household articles" composed of plastics.

An examination of the plastic clips and hooks at issue reveals their primary use for temporarily securing various types of miniature electric lights on roofs and gutters of a house or other residential dwelling during the Christmas season. More specifically, the description provided for the light clips and hooks in NY F81404 appears substantially similar to several other products mentioned in the cited rulings. Because of the substantial similarities between these products, and the numerous rulings recently issued which determined them to be household articles under subheading 3924.90.55, HTSUS, CBP believes that the subject merchandise is also classified under subheading 3924.90.55, HTSUS, the more specific provision.

HOLDING:

The plastic clips and hooks for electric lights are classified under subheading 3924.90.5500, Harmonized Tariff Schedule of the United States Annotated, as "Tableware, kitchenware, other household articles and toilet articles, of plastics: Other: Other." The column one, general rate of duty is 3.4 percent *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.

EFFECT ON OTHER RULINGS:

NY F81404 is REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF A RULING LETTER, MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN HATS OF FINE ANIMAL HAIR

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter, modification of two tariff classification ruling letters and revocation of treatment relating to the classification of certain hats of fine animal hair.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs & Border Protection (CBP) intends to revoke a ruling letter and modify two ruling letters relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain hats of fine animal hair. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before November 12, 2004.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Textiles Branch: (202) 572-8883.

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, this notice advises interested parties that CBP intends to revoke one ruling letter and modify two ruling letters relating to the tariff classification of certain hats of fine animal hair. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) J85862, dated July 22, 2003 (Attachment A) and the modification of NY H83073, dated August 3, 2001 (Attachment B) and NY I80194, dated April 29, 2002 (Attachment C), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, an internal advice memorandum or decision or a protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical 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 with 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 its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY J85862, CBP classified three knit hats made of 70 percent cashmere and 30 percent silk, with fur trimming, in subheading 6505.90.3090, HTSUSA, as being "of wool." In NY H83073, CBP classified a beret style hat made of alpaca wool fabric in subheading 6505.90.4090, HTSUSA, as being "of wool." In NY I80194, CBP classified two cable knit hats made of 70 percent angora hair, twenty

percent rabbit hair, and ten percent nylon in subheading 6505.90.3090, HTSUSA, as being "of wool."

Based on our review of NY J85862, NY H83073, and NY I80194, we find that the hats referred to in the above paragraph are made of "fine animal hair" and are not "of wool." Accordingly, they should be classified in subheading 6505.90.9045, HTSUSA, which provides for "Hats and other headgear . . . : Other: Other: Other: Of fine animal hair." Pursuant to 19 U.S.C. 1625 (c)(1), CBP intends to revoke NY J85862 and modify NY H83073 and NY I80194 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analyses set forth in proposed Headquarters Ruling Letter (HQ) 967314 (Attachment D), HQ 967315 (Attachment E), and HQ 967316 (Attachment F). 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 20, 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 J85862
July 22, 2003
CLA-2-65:RR:NC:3:353 J85862
CATEGORY: Classification
TARIFF NO.: 6505.90.3090

MR. RICHARD LOCURTO
CASSIN
150 West 30th Street, 5th Floor
New York, NY 10001

RE: The tariff classification of a knit and fur hat from China.

DEAR MR. LOCURTO:

In your letter dated June 17, 2003, received in this office on June 27, 2003, you requested a classification ruling. The submitted sample will be returned to you.

The submitted sample is a Style CA1022R Rex Rabbit Hat. The hat is constructed of a knit crown of 70% cashmere and 30% silk, on the outside of which rabbit fur is attached. When viewed, you see the knit portion on the top of the head and the fur around the circumference of the head. Style

CA1022M will be identical except for mink fur, and Style CA1022F will be identical except for fox fur.

The Explanatory Notes for heading 6505 state :

The articles are classified here whether or not they have been lined or trimmed.

They include :

(1) Hats, whether or not trimmed with ribbons, hat pins, buckles, artificial flowers, foliage or fruit, feathers or other trimmings of any material. (emphasis added)

The applicable subheading for the Styles CA1022R, CA1022M and CA1022FG hats will be 6505.90.3090, Harmonized Tariff Schedule of the United States (HTS), which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed: Other: Of wool: Knitted or crocheted or made up from knitted or crocheted fabric, Other: Other." The duty rate will be 27.9 cents per kilogram plus 8.5 percent ad valorem.

Styles CA1022R, CA1022M and CA1022FG hats fall within textile category designation 459. Based upon international textile trade agreements products of 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 Textile Status Report for Absolute Quotas, which is available at our Web site at 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 Kenneth Reidlinger at 646-733-3053.

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

[ATTACHMENT B]

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

NY H83073

August 3, 2001

CLA-2-61:RR:NC:3:353 H83073

CATEGORY: Classification

TARIFF NO.: 6117.10.1000, 6505.90.4090

MR. ROGER EVANS
LA LLAMA ENTERPRISES LTD.
2416 Black frank's Dr.
Canada V9T 3K5

RE: The tariff classification of scarves and a hat from Peru.

DEAR MR. EVANS:

In your letter dated July 5, 2001 you requested a classification ruling. The samples will be returned to you as requested.

Samples of two scarves and one hat were submitted with your request. The two sample scarves are composed of knit alpaca wool fabric and the hat is composed of woven alpaca wool fabric. Style A-76 named Yata is approximately 60" long and 9" wide with fringe at both ends. Style A-75 is approximately 60" long and 7 1/2" wide with fringe at both ends and a loose knit design. Style A-017 is a beret style hat with a button at the top and a fabric lining.

The applicable subheading for the scarves, styles A-076 and A-075 will be 6117.10.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories: Shawls, scarves, mufflers, mantillas veils and the like: Of wool or fine animal hair." The duty rate will be 9.8% ad valorem.

The applicable subheading for the hat, style A-017 will be 6505.90.4090, Harmonized Tariff Schedule of the United States (HTS), which provides for "Hats and other headgear, knitted or crocheted . . . Other: Of wool: Other: Other." The duty rate will be 31.6 cents/kg + 8% ad valorem.

Styles A-076, A-075 and A-017 fall within textile category designation 459. Based upon international textile trade agreements products of Peru are not subject to quota but are subject to the requirement of a visa.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is im-

ported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at 212-637-7084.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY I80194
April 29, 2002
CLA-2-65:RR:NC:3:353 I80194
CATEGORY: Classification
TARIFF NO.: 6505.90.3090, 6117.80.9520

MR. JOHN B. PELLEGRINI
ROSS & HARDIES
65 East 55th St.
New York, NY 10022-3219

RE: The tariff classification of hat and a headband from China.

DEAR MR. PELLEGRINI:

In your letter dated April 4, 2002, on behalf of Paris Asia, Ltd., you requested a classification ruling. The samples will be returned to you as requested.

The submitted samples are two hats and a headband made from knit 70%/20%/10% angora, rabbit, nylon blend. Style 9576 is an envelope-style cable knit hat with tassels at the front and back. Style 7580 is a helmet-style cable knit hat. Style 9579 is a cable knit headband 3" wide that is used for warmth.

The applicable subheading for the hats, styles 9576 and 7580 will be 6505.90.3090, Harmonized Tariff Schedule of the United States (HTS), which provides for "Hats and other headgear . . . Of wool: Knitted or crocheted or made up from knitted or crocheted fabric, Other: Other." The duty rate will be 30.5 cents/kg + 9.2% ad valorem.

The applicable for the headband, style 9579 will be 6117.80.9520, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other made up clothing accessories . . . Other accessories: Other: Other, Of wool or fine animal hair. The duty rate will be 14.8% ad valorem

Styles 9576, 7580 and 9579 fall within textile category designation 459. Based upon international textile trade agreements products of 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 ad-

dition, 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 Kenneth Reidlinger at 646-733-3053.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967314
CLA-2: RR:CR:TE: 967314 BtB
CATEGORY: Classification
TARIFF NO.: 6505.90.9045

MR. RICHARD LOCURTO
CASSIN
150 West 30th Street, 5th Floor
New York, NY 10001

RE: Tariff classification of certain knit and fur hats from China; Revocation of NY J85862

DEAR MR. LOCURTO:

On July 22, 2003, our New York office issued to you New York Ruling Letter (NY) J85862, classifying three knit and fur hats from China under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Upon review of that ruling, we have found that the classifications provided for the three hats are in error. This ruling letter, HQ 967314, hereby revokes NY J85862.

FACTS:

We are referring to the classifications provided for the "Style CA1022R" hat, the "Style CA1022M" hat, and the "Style CA1022F" hat (collectively, the "hats"). The hats are identical in style, but are made with different types of fur which is attached to the outside of the crown. When the hats are viewed, you see the knit portion on the top of the head and the fur around the circumference of the head.

The hats have a knit crown of 70% cashmere and 30% silk. The "Style CA1022R" hat has rabbit fur attached to the crown, while the "Style CA1022M" has mink fur, and the "Style CA1022F" has fox fur.

In NY J85862, the hats were classified in subheading 6505.90.3090, HTSUSA, which provides for: "Hats and other headgear . . . : Other: Of wool:

Knitted or crocheted or made up from knitted or crocheted fabric, Other: Other.”

ISSUE:

What is the classification of the hats?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” In the event that 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, in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Chapter 51 of the HTSUSA covers wool, fine or coarse animal hair, horse-hair yarn and woven fabric. Note 1 to Chapter 51 reads, in pertinent part:

1. Throughout the tariff schedule:

- (a) “Wool” means the natural fiber grown by sheep or lambs;
- (b) “Fine animal hair” means the hair of alpaca, llama, vicuna, camel, yak, Angora, Tibetan, **Kashmir** or similar goats (but not common goats), rabbit (including Angora rabbit), hare, beaver, nutria or muskrat[.]¹

* * *

(Emphasis added).

Section XI, Note 2(A), HTSUSA, states, in pertinent part, that “[g]oods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material.” Subheading Note 2(A) to Section XI, HTSUSA, states that “[p]roducts of chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for classification of a product of chapters 50 to 55 or of heading 5809 consisting of the same textile materials.” Additional U.S. Rule of Interpretation 1(d), HTSUSA, provides that “the principles of section XI regarding mixtures of two or more textile materials shall apply to the classification of goods in any provision in which a textile material is named.”

It should be understood that Section XI, Note 2(A) applies to only material and only to the chapters and headings listed therein while Subheading Note

¹ Kashmir goats are also known as “cashmere goats” and their hair is also known as “cashmere.”

2(A) to Section XI makes Section Note 2(A) applicable to articles of textile material classifiable in Section XI. Further, Additional U.S. Rule of Interpretation 1(d) then makes Subheading Note 2(A) applicable to textile articles outside Section XI. Consequently, as the hats are textiles articles in which cashmere predominates by weight over silk, we will classify the hats as if consisting wholly of cashmere.

The EN to heading 6505 state that hats are classified in that heading regardless of whether they have been lined or trimmed. We consider the fur attached to the crown of each of the hats to be trimming. Therefore, the fur does not affect the classification of the hats.

In NY J85862, the hats were classified as being “of wool” in error. The articles are made of “fine animal hair” (i.e., the hair of the Kashmir goat) as defined in Note 1(b) to Chapter 51, HTSUSA, not “wool” as defined in Note 1(a) to Chapter 51, HTSUSA. Also see NY K85242, dated June 15, 2004, in which we classified a 100% cashmere hat in subheading 6505.90.9045, HTSUSA, which provides for, among other things, textile hats and other headgear of fine animal hair.

HOLDING:

The “Style CA1022R” hat, the “Style CA1022M” hat, and the “Style CA1022F” hat are classified in subheading 6505.90.9045, HTSUSA, which provides for “Hats and other headgear . . . : Other: Other: Of fine animal hair.” The general rate of duty for these style numbers will be 20.7 cents per kilogram plus 7.5 percent *ad valorem*. The textile category designation is 459.

NY J85862, dated July 22, 2003, is hereby revoked.

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, close to the time of shipment, the Textile Status Report for Absolute Quotas, which is available on the CBP website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your 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 E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967315
CLA-2: RR:CR:TE: 967315 BtB
CATEGORY: Classification
TARIFF NO.: 6505.90.9045

MR. ROGER EVANS
LA LLAMA ENTERPRISES LTD.
2416 Black Franks Drive
Nanaimo, BC V9T 3K5
Canada

RE: Tariff classification of a certain hat from Peru; Modification of NY H83073

DEAR MR. EVANS:

On August 3, 2001, our New York office issued to you New York Ruling Letter (NY) H83073, classifying two scarves and one hat from Peru under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Upon review of that ruling, we have found that the classification provided for the hat is in error. This ruling letter, HQ 967315, hereby modifies NY H83073 in regard to the classification of that hat.

FACTS:

We are referring to the classification provided for the "Style A-017 beret hat." The hat is a "beret style hat with a button at the top and a fabric lining." The outer shell of the hat is composed of woven alpaca wool fabric. The composition of the fabric lining is not known.

In NY H83073, the hat was classified in subheading 6505.90.4090, HTSUSA, which provides for: "Hats and other headgear . . . : Other: Of wool: Other, Other: Other."

ISSUE:

What is the classification of the hat?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." In the event that 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, in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Chapter 51 of the HTSUSA covers wool, fine or coarse animal hair, horse-hair yarn and woven fabric. Note 1 to Chapter 51 reads, in pertinent part:

1. Throughout the tariff schedule:

- (a) “Wool” means the natural fiber grown by sheep or lambs;
- (b) “Fine animal hair” means the hair of **alpaca**, llama, vicuna, camel, yak, Angora, Tibetan, Kashmir or similar goats (but not common goats), rabbit (including Angora rabbit), hare, beaver, nutria or muskrat[.]

* * *

(Emphasis added).

The woven alpaca wool fabric shell imparts the essential character to the hat.¹ Furthermore, the EN to heading 6505 state that hats are classified in that heading regardless of whether they have been lined. In NY H83073, the hat was classified as being “of wool” in error. The hat is made of “fine animal hair” (i.e., the hair of the alpaca) as defined in Note 1(b) to Chapter 51, HTSUSA, not “wool” as defined in Note 1(a) to Chapter 51, HTSUSA. Also see NY G83565, dated November 13, 2002, in which we classified two hats composed of knitted alpaca fabric in subheading 6505.90.9045, HTSUSA, which provides for, among other things, textile hats and other headgear of fine animal hair.

HOLDING:

The “Style A-017 beret hat” is classified in subheading 6505.90.9045, HTSUSA, which provides for “Hats and other headgear . . . : Other: Other: Of fine animal hair.” The general rate of duty for the hat will be 20.7 cents per kilogram plus 7.5 percent *ad valorem*. The textile category designation is 459.

NY H83073, dated August 3, 2001, is hereby modified in regard to the classification of the “Style A-017 beret hat.”

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, close to the time of shipment, the Textile Status Report for Absolute Quotas, which is available on the CBP website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your 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.

¹While we have recognized that linings do impart desirable and, sometimes, necessary features to apparel articles, it is generally the outer shell which creates the article and, thus, imparts the essential character. See, e.g., HQ 952437, dated October 23, 1992.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967316
CLA-2: RR:CR:TE: 967316 BtB
CATEGORY: Classification
TARIFF NO.: 6505.90.9045

MR. CHARLES D. ASHEAR
PARIS ASIA, LTD.
350 Fifth Avenue – Floor 70
New York, New York 10118

RE: Tariff classification of certain hats from China; Modification of NY I80194

DEAR MR. ASHEAR:

On April 29, 2002, our New York office issued New York Ruling Letter (NY) I80194 to Mr. John B. Pellegrini, counsel for Paris Asia, Ltd., classifying two cable knit hats and a headband from China under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). As you requested, we are copying Mr. Pellegrini on this ruling letter. Upon review of NY I80194, we have found that the classifications provided for the two hats are in error. This ruling letter, HQ 967316, hereby modifies NY I80194 in regard to the classification of those hats.

FACTS:

We are referring to the classifications provided for the “Style 9576” and “Style 7580” hats. The Style 9576 is an envelope-style cable knit hat with tassels at the front and back. Style 7580 is a helmet-style cable knit hat. Both hats are made of 70 percent angora hair, 20 percent rabbit hair, and 10 percent nylon.

In NY I80194, the hats were classified in subheading 6505.90.3090, HTSUSA, which provides for: “Hats and other headgear . . . : Other: Of wool: Knitted or crocheted or made up from knitted or crocheted fabric, Other: Other.”

ISSUE:

What is the classification of the hats?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” In the event that 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, in order. The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the

scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Chapter 51 of the HTSUSA covers wool, fine or coarse animal hair, horse-hair yarn and woven fabric. Note 1 to Chapter 51 reads, in pertinent part:

1. Throughout the tariff schedule:

(a) “Wool” means the natural fiber grown by sheep or lambs;

(b) “Fine animal hair” means the hair of alpaca, llama, vicuna, camel, yak, Angora, Tibetan, Kashmir or similar goats (but not common goats), rabbit (including Angora rabbit), hare, beaver, nutria or muskrat[.]

*

*

*

Section XI, Note 2(A), HTSUSA, states, in pertinent part, that “[g]oods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material.” Subheading Note 2(A) to Section XI, HTSUSA, states that “[p]roducts of chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for classification of a product of chapters 50 to 55 or of heading 5809 consisting of the same textile materials.” Additional U.S. Rule of Interpretation 1(d), HTSUSA, provides that “the principles of section XI regarding mixtures of two or more textile materials shall apply to the classification of goods in any provision in which a textile material is named.”

It should be understood that Section XI, Note 2(A) applies to only material and only to the chapters and headings listed therein while Subheading Note 2(A) to Section XI makes Section Note 2(A) applicable to articles of textile material classifiable in Section XI. Further, Additional U.S. Rule of Interpretation 1(d) then makes Subheading Note 2(A) applicable to textile articles outside Section XI. Consequently, as the hats are textiles articles in which angora hair predominates by weight, we will classify the hats as if consisting wholly of angora hair.

In NY I80194, the hats were classified as being “of wool” in error. The hats are in chief weight of “fine animal hair” (i.e., angora hair) as defined in Note 1(b) to Chapter 51, HTSUSA, not “wool” as defined in Note 1(a) to Chapter 51, HTSUSA.

HOLDING:

The “Style 9576” and “Style 7580” hats are classified in subheading 6505.90.9045, HTSUSA, which provides for “Hats and other headgear . . . : Other: Other: Of fine animal hair.” The general rate of duty for the hats will be 20.7 cents per kilogram plus 7.5 percent *ad valorem*. The textile category designation is 459.

NY I80194, dated April 29, 2002, is hereby modified in regard to the classification of these styles of hats.

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,

close to the time of shipment, the Textile Status Report for Absolute Quotas, which is available on the CBP website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your 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.



19 CFR PART 177

REVOCAION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF TATTOO NEEDLES

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of tattoo needles.

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 revoke a ruling relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of tattoo needles, and to revoke any treatment CBP has previously accorded to substantially identical transactions. These articles may be either a single-tipped needle used for fine lining or, more typically, a group of several very small needles called sharps soldered to a needle bar, often with a rubber sleeve on the other end. CBP invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before November 12, 2004.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs

and Border Protection, 799 9th Street, N.W., Washington, D.C. 20220, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 572-8779.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling relating to the tariff classification of tattoo needles. Although in this notice CBP is specifically referring to one ruling, NY J84902, 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 identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment it previously accorded 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 previous interpretation of the HTSUS. 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 his agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY J84902, dated June 6, 2003, tattoo needles were held to be classifiable in subheading 8479.90.9495, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as other parts of machines and mechanical appliances. This ruling was based on a misunderstanding as to the classification of the hand held, electrically operated tattoo machine of which the needles were parts. NY J84902 is set forth as "Attachment A" to this document.

It is now CBP's position that these tattoo needles are classifiable in subheading 8207.90.6000, HTSUSA, as other interchangeable tools for handtools, whether or not powered operated, and parts thereof. Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY J84902 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in HQ 967262, which is set forth as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: September 29, 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 J84902

June 6, 2003

CLA-2-84:RR:NC:1:103 J84902

CATEGORY: Classification

TARIFF NO.: 8479.90.9495

MR. PETER D. ALBERDI
A.J. ARANGO, INC.
PO Box 75062
Tampa, FL 33675-5062

RE: The tariff classification of tattoo needles from China

DEAR MR. ALBERDI:

In your letter dated May 2, 2003 on behalf of Creative Sourcing and Development you requested a tariff classification ruling.

With your inquiry you submitted 2 samples of tattoo machine needles. Each sample needle consists of a metal shaft approximately 5 1/2 inches in length with a small loop at the top. Approximately 5/16 inch from the bottom the solid body of the needle shaft divides into five fine, sharp points. The needle is packed in a plastic container, on the back of which is printed the item number, a statement that the needle has undergone ethylene oxide gas sterilization, and an expiration date. After importation a needle will be installed in an electro-magnetically powered hand-held tattoo machine. The needle is dipped in ink and the vibratory action of the tattoo machine drives the needle in an up and down fashion 50 to 3000 times a minute, causing the needle tips to puncture the top layer of skin and deposit ink particles into the second (dermal) skin layer.

The applicable subheading for the tattoo needles will be 8479.90.9495, Harmonized Tariff Schedule of the United States (HTS), which provides for parts of machines and mechanical appliances having individual functions, not specified or included elsewhere (in chapter 84): other: other: other. The rate of duty will be free.

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 Alan Horowitz at 646-733-3010.

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

ISSUE:

Whether needles for electrically operated tattoo machines are interchangeable tools for power-operated handtools.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Initially, heading 8479 is in Section XVI, HTSUS. Section XVI, Note 1(k) excludes articles of chapter 82 and 83. Thus, if the tattoo needles at issue are goods of chapter 82 or 83, they cannot be classifiable in heading 8479. The classification expressed in NY J84902 was based on erroneous information that the tattoo machine which utilized the needles did not have a self-contained electric or non-electric motor. In fact, it is now apparent that the tattoo machines are DC coil and spring point machines. In these devices, the coils become electromagnetic by means of current flowing from a DC power supply, via wires, in two directions, through the coils to the adjustable contact screw, and through the frame to the contact spring. Devices that operate in this fashion are known variously as linear electric motors or electrical reciprocating motors. The tattoo machines therefore qualify under heading 8467, HTSUS, as tools for working in the hand, with self-contained electric motor. See NY K87620, dated August 5, 2004. It necessarily follows that tattoo needles solely or principally used with such machines qualify as interchangeable tools for power-operated handtools, of heading 8207.

HOLDING:

Under the authority of GRI 1, tattoo needles for electro-magnetically powered hand-held tattoo machines are provided for in heading 8207. They are classifiable in subheading 8207.90.6000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The current rate of duty under this provision is 4.3 percent ad valorem. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

NY J84902, dated June 6, 2003, is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177**PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF DRINK MIX KITS**

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the classification of drink mix kits imported from China.

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 concerning the tariff classification of glasses in drink mix kits, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before November 12, 2004.

ADDRESS: Written comments are to be addressed to Bureau of Customs and Border Protection, Office of Regulation and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at 799 9th St. N.W., 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: Allyson Mattanah, General Classification Branch, (202) 572–8784.

SUPPLEMENTARY INFORMATION:

Background

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

any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (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 pertaining to the tariff classification of drink mix kits. Although in this notice Customs is specifically referring to New York Ruling Letter (NY) J89555, dated October 28, 2003, set forth as attachment "A" to this document, 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 further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY J89555, CBP classified the cylinder-shaped glass article in subheading 7013.99.50, HTSUS, which provides for glassware of a kind used for . . . toilet, office, indoor decoration and similar purposes . . . other glassware: other: other: other: valued over thirty cents but not over three dollars each. We now believe that the glass article packaged in the drink mix kit is classifiable as a drinking glass in subheading 7013.29.20, HTSUS.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY J89555, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 967004, set forth as attachment "B" to this

document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 29, 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 J89555
October 28, 2003
CLA-2-17:RR:NC:2:228 J89555
CATEGORY: Classification
TARIFF NO.: 1701.91.1000, 1701.91.3000, 2106.90.9972,
2106.90.9973, 2501.00.0000, 7013.99.5000

MR. SHACHAR GAT
SHONFELD'S USA, INC.
16871 Noyes Avenue
Irvine, CA 92606

RE: The tariff classification of drink mix sets from China.

DEAR MR. GAT:

In your letter dated September 25, 2003, you requested a tariff classification ruling.

Samples and descriptive literature for three items were submitted with your letter. The samples were examined and disposed of. Item no. DM-205586A is comprised of a bottle of Margarita mix, a test tube of colored salt, and a decorated cylinder-shaped glass article. The Margarita mix consists of high fructose corn syrup, water, citric acid, natural and artificial flavor, sucrose acetate, iso-butyrate, and coloring. Item no. DM-205586B is made up of a bottle of Daiquiri mix, a test tube of colored sugar, and a decorated cylinder-shaped glass article. The Daiquiri mix consists of water, sugar, fructose corn sweeteners, natural flavor, citric acid, sodium benzoate, and coloring. Instructions on the labels direct the consumer to combine the mixes with rum, Tequila, or Cointreau, add ice, shake, strain, and pour into a glass with a salt or sugar coated rim.

The applicable subheading for the sugar contained in Item no. DM-205586B, if described in additional U.S. note 5 to chapter 17 and entered pursuant to its provisions, will be 1701.91.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for cane or beet sugar and chemically pure sucrose in solid form . . . other . . . containing added coloring

but not containing added flavoring matter. The rate of duty will be 3.6606 cents per kilogram less 0.020668 cents per kilogram for each degree under 100 degrees (and fractions of a degree in proportion) but not less than 3.143854 cents per kilogram. If not described in additional U.S. note 5 to chapter 17 and not entered pursuant to its provisions, the applicable subheading will be 1701.91.3000, HTS. The duty rate will be 35.74 cents per kilogram. In addition, products classified under subheading 1701.91.3000, HTS, will be subject to additional duties based on their value as described in subheadings 9904.17.08 to 9904.17.15, HTS.

The applicable subheading for the Daquiri mix will be 2106.90.9972, HTS, which provides for food preparations not elsewhere specified or included . . . other . . . other . . . preparations for the manufacture of beverages . . . containing sugar derived from sugar cane and/or sugar beets. The rate of duty will be 6.4 percent ad valorem.

The applicable subheading for the Margarita mix will be 2106.90.9973, HTS, which provides for food preparations not elsewhere specified or included . . . other . . . other . . . preparations for the manufacture of beverages . . . other. The rate of duty will be 6.4 percent ad valorem.

The applicable subheading for salt contained in Item no. DM-205586A will be 2501.00.0000, HTS, which provides for salt (including table salt and denatured salt) and pure sodium chloride, whether or not in aqueous solution or containing added anticaking or free-flowing agents. The rate of duty will be free.

The applicable subheading for the cylinder-shaped articles will be 7013.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for glassware of a kind used for . . . toilet, office, indoor decoration and similar purposes . . . other glassware: other: other: other: valued over thirty cents but not over three dollars each. The rate of duty will be 30 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 Stanley Hopard at 646-733-3029.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967004
CLA-2 RR:CR:GC 967004AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 7013.29.20

MR. PETER W. KLESTADT
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN AND KLESTADT LLP
399 Park Avenue, 25th Floor
New York, NY 10022-4877

RE: New York Ruling Letter J89555; drink mix kits from China

DEAR MR. KLESTADT:

This is our decision regarding your letter, dated December 15, 2003, addressed to the Director, National Commodity Specialist Division, on behalf of your client, Shonfeld's USA, Inc., requesting reconsideration of New York Ruling Letter (NY) J89555, dated October 28, 2003, regarding the tariff classification, pursuant to the Harmonized Tariff Schedule of the United States (HTSUS), of drink mix kits imported from China. Your letter was forwarded to this office for reply.

We have reviewed NY J89555 and find the classification given therein for the glassware to be incorrect. We propose to modify the ruling as explained below.

FACTS:

The merchandise consists of a margarita mix kit and a strawberry daiquiri mix package. Item no. DM-205586A is comprised of a bottle of margarita mix, a test tube of colored salt, and a decorated cylinder-shaped glass article. The Margarita mix consists of high fructose corn syrup, water, citric acid, natural and artificial flavor, sucrose acetate, iso-butyrate, and coloring.

Item no. DM-205586B is made up of a bottle of daiquiri mix, a test tube of colored sugar, and a decorated cylinder-shaped glass article. The daiquiri mix consists of water, sugar, fructose corn sweeteners, natural flavor, citric acid, sodium benzoate, and coloring. Instructions on the labels direct the consumer to combine the mixes with rum, tequila, or cointreau, add ice, shake, strain, and pour into a glass with a salt or sugar coated rim.

Both glass articles in the package measure approximately 6 inches high and 2 1/4 inches in diameter. They are frosted cylindrical articles with blending instructions for a margarita or daiquiri and a picture of one or the other of these drinks in the usual shaped drinking glass used for these beverages. The glass article in the package is valued between \$0.30 and \$3.

In NY J89555, CBP classified the daiquiri sugar in subheading 1701.91.10, HTSUS, which provides for cane or beet sugar and chemically pure sucrose in solid form . . . other . . . containing added coloring but not containing added flavoring matter. CBP classified the margarita and daiquiri mixes in subheading 2106.90.99, HTSUS, which provides for food preparations not elsewhere specified or included . . . other . . . preparations for the manufacture of beverages . . . containing sugar derived from sugar cane and/or sugar beets. CBP classified the margarita salt in subheading

2501.00.00, HTSUS, which provides for salt (including table salt and denatured salt) and pure sodium chloride, whether or not in aqueous solution or containing added anticaking or free-flowing agents. Lastly, CBP classified the cylinder-shaped glass articles in subheading 7013.99.50, HTSUS, which provides for glassware of a kind used for . . . toilet, office, indoor decoration and similar purposes . . . other glassware: other: other: other: valued over thirty cents but not over three dollars each.

ISSUE:

Whether hollow cylinder shaped glass articles packaged in a margarita and daiquiri kit are classified as drinking glasses in the HTSUS.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS headings and subheadings under consideration are as follows:

7013 Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):

Drinking glasses, other than of glass-ceramics:

7013.29 Other:

Other:

7013.29.20 Valued over \$0.30 but not over \$3 each

Other glassware:

7013.99 Other:

Other:

Other:

7013.99.50 Valued over \$0.30 but not over \$3 each

The dispute here arises at the subheading level as between drinking

glasses and other glassware. An internet search reveals many tall cylindrical shaped glasses called an iced tea or Tom Collins glass for the drinks most often served in them. While the usual glass for a daiquiri or margarita is shaped quite differently, and is even pictured on the glass itself, the glass enclosed in these drink mix kits is recognizable as a drinking glass. It is referred to on the packaging as a "novelty glass" and it is quite clearly intended to be used as a drinking glass. Applying GRI 6, the product is more specifically described in subheading 7013.29, HTSUS, as a drinking glass.

HOLDING:

The glass article in the margarita and daiquiri packages is classified in subheading 7013.29.2000, HTSUSA (annotated) the provision for "[G]lassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Drinking glasses, other than of glass-ceramics: Other: Other: Valued over \$0.30 but not over \$3 each." The duty rate for the drinking glass is 22.5%.

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.

EFFECT ON OTHER RULINGS:

NY J89555 is MODIFIED to reflect the proper classification of the glass articles as stated above. The drink mixes, salt and sugar remain classified as they were in NY J89555.

MYLES B. HARMON,
Director,
Commercial Rulings Division.