

Bureau of Customs and Border Protection

General Notices

Notice of Cancellation of Customs Broker License

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses are canceled with prejudice.

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
International Customs Brokers	13684	Houston
Diana M. Cachia	05635	New York

DATED: October 8, 2004

JAYSON P. AHERN,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, October 25, 2004 (69 FR 62279)]

Notice of Cancellation of Customs Broker National Permit

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker national permits are canceled without prejudice.

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
J.E. Lowden & Co.	99-00190	Headquarters
Word Asia Logistics, Inc.	99-00281	Headquarters

DATED: October 8, 2004

JAYSON P. AHERN,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, October 25, 2004 (69 FR 62279)]

Notice of Cancellation of Customs Broker License

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license is canceled without prejudice.

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
J.E. Lowden & Co.	05118	San Francisco

DATED: October 8, 2004

JAYSON P. AHERN,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, October 25, 2004 (69 FR 62279)]

Cancellation of Customs Broker License Due to Death of the License Holder

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

ACTION: General Notice

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations § 111.51(a), the following individual Customs broker license and any and all permits have been cancelled due to the death of the broker.

<u>Name</u>	<u>License #</u>	<u>Port Name</u>
Richard J. Oates	05109	Mobile

DATED: October 8, 2004

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, October 25, 2004 (69 FR 62279)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, October 20, 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.

Myles B. Harmon for MICHAEL T. SCHMITZ,
*Assistant Commissioner,
Office of Regulations and Rulings.*

REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN MASSAGING SLIPPERS

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

ACTION: Notice of revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of certain massaging slippers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs & Border Protection (CBP) is revoking two ruling letters relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain massaging slippers. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on August 25, 2004, in Volume 38, Number 35 of the *Customs Bulletin*. Two comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 2, 2005.

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, a notice proposing to revoke New York Ruling Letter (NY) J87028, dated August 21, 2003, and NY K81794, dated February 4, 2004, relating to the classification of certain massaging slippers, was published in the August 25, 2004, *Customs Bulletin*, Volume 38, Number 35. Two comments were received in response to this notice. Both comments supported the proposed action. Additionally, one of the comments noted that the model numbers for the massaging slippers in NY J87028 were incorrectly stated. That comment is addressed in the attachment to this notice.

As stated in the notice of proposed revocation, the notice covered 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 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 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 HTSUSA. Any person involved with 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 im-

porter or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY J87028, one model of massaging slipper was classified in subheading 6403.59.90, HTSUSA, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: Other footwear with outer soles of leather: Other: Other: For other persons." Also in NY J87028, another model of massaging slipper was classified in subheading 6403.99.60, HTSUSA, which provides for "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: Other: Other: Other: For men, youths and boys." In NY K81794, a different model of massaging slipper was also classified in subheading 6403.59.90, HTSUSA. Based on our review of heading 6403 and heading 9019, HTSUSA, the pertinent Explanatory Notes, and past CBP rulings, we find that massaging slippers of the type subject to this notice, should be classified in subheading 9019.10.2030, HTSUSA, which provides for "Mechano-therapy appliances and massage apparatus; parts and accessories thereof, Massage apparatus: Electrically operated: Battery powered: Other."

Pursuant to 19 U.S.C. 1625 (c)(1), CBP is revoking NY J87028 and NY K81794, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967179, which is an "Attachment" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: October 15, 2004

Cynthia Reese for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967179
October 15, 2004
CLA-2: RR:CR:TE: 967179 BtB
CATEGORY: Classification
TARIFF NO.: 9019.10.2030

JOHN L. GLUECK, ESQ.
CONAIR CORPORATION
1 Cummings Point Road
Stamford, CT 06904

RE: Revocation of NY J87028 and NY K81794 regarding the tariff classification of massaging slippers

DEAR MR. GLUECK:

This is in response to your letter dated June 24, 2004, on behalf of Conair Corporation, requesting reconsideration of New York Ruling Letter (NY) J87028, dated August 21, 2003, and NY K81794, dated February 4, 2004, regarding the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain massaging slippers manufactured in China.

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, 2186 (1993), notice of the proposed revocation of NY J87028 and NY K81794 was published in the *Customs Bulletin*, Volume 38, Number 35, on August 25, 2004. CBP received two comments during the notice and comment period that closed on September 24, 2004, both of which supported the proposed action. One comment, from you, noted that two of the massaging slipper models at issue, model VSW1 and VSM1, were incorrectly referred to as model "WSW1" and "WSM1" in NY J87028. While this ruling addresses the classification of the same models, the models are referred to by their correct names, model VSW1 and VSM1.

FACTS:

NY J87028 covers Conair™ Body Benefits® Foot Vibes™ massaging slippers models VSW1 and VSM1. The VSW1 is designed for women and the VSM1 is designed for men. Both are only available in "one-size-fits-all." The VSW1 is a closed-toe, open-heel slipper with a suede leather upper external surface area. It has a woven textile fleece-like collar, approximately 1-¾ inches wide, traversing the vamp. Additionally, it has a thick foam rubber/plastic midsole (the rear portion of which is accessible through a zippered closure) and a separately sewn-on suede leather outer sole. A vibrating massaging unit is embedded in the heel section of the VSW1's midsole. When turned on, the unit causes the midsole to vibrate, giving the wearer a foot massage. The unit is turned on and off with a push-button switch located on the side of the slipper. The VSM1 is also a closed-toe, open-heel slipper with a suede leather upper external surface area. Unlike the VSW1, the VSM1 does not have a woven textile fleece-like collar traversing the vamp or on its midsole. Instead, the VSM1 has a textile top-line collar, approximately ¾ of an inch wide, traversing the vamp. It has a textile faced foam rubber padded insole and a rubber/plastic outsole. Additionally, it has a thick foam rubber/plastic midsole (the rear portion of which is accessible through a zippered

closure). Like the VSW1, a vibrating massaging unit is embedded in the heel section of the VSM1's midsole. The unit is turned on and off with a push-button switch located on the side of the slipper.

NY K81794 covers Conair™ Body Benefits® Foot Vibes™ massaging slippers model VSW1G. This VSW1G is identical to the VSW1 except that the suede leather upper and the fleece-like band upper portion traversing the instep can be pulled apart, revealing a relatively flat pouch measuring approximately 4 ½ inches across by 4 inches deep. The VSW1G comes with two “gel packs” which are designed to be heated in a microwave and placed into the pouches in each slipper. Each pouch has a hook and loop fabric closure that helps to keep the packets in place, on top of the instep, when they are inserted in the slippers.

The VSW1, VSM1, and VSW1G are powered by batteries that are not included with the slippers. Each slipper uses two AAA batteries. All of the models are boxed and sold as massaging slippers.

In NY J87028, model VSW1 was classified in subheading 6403.59.90, HTSUSA, which provides for “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: Other footwear with outer soles of leather: Other: Other: For other persons.” Also in NY J87028, model VSM1 was classified in subheading 6403.99.60, HTSUSA, which provides for “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather: Other: Other: Other: Other: For men, youths and boys.” In NY K81794, model VSW1G was also classified in subheading 6403.59.90, HTSUSA.

In this ruling, models VSW1, VSM1, and VSW1G will be collectively referred to as the “Conair™ massaging slippers.”

ISSUE:

Whether the Conair™ massaging slippers are classified under heading 9019, HTSUSA, as massage apparatus, or under heading 6403, HTSUSA, as footwear.

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).

Models VSW1 and VSM1 each consist of two individual components, a slipper and a massaging mechanism. Nevertheless, classification of the models may be determined pursuant to GRI 1 if the terms of either heading 6404, HTSUSA, or 9019, HTSUSA, are sufficiently broad to cover the complete article.

Heading 6403, HTSUSA, covers “Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather.” It is clear that the terms of this heading cover only one of the models’ components, the slipper.

In pertinent part, heading 9019, HTSUSA, covers “Mechano-therapy appliances; massage apparatus . . . parts and accessories thereof.” For guidance in interpreting the scope of this heading, we look to the EN to heading 9019, which in part pertinent to the term “massage apparatus,” provide the following guidance:

(II) MASSAGE APPARATUS

Apparatus for massage of parts of the body (abdomen, feet, legs, back, arms, hands, face, etc.) usually operate by friction, vibration, etc. They may be hand- or power-operated, or may be of an electro-mechanical type with a motor built in to the working unit (vibratory-massaging appliances). The latter type in particular may include interchangeable attachments (usually of rubber) to allow various methods of application (brushes, sponges, flat or toothed discs, etc.).

The terms of the heading and the guidance provided by the EN indicate that heading 9019, HTSUSA, is sufficiently broad to cover both of the components of the VSW1 and VSM1. As noted, a “massage apparatus” may include not only a vibratory-massaging appliance, but also the method by which the vibrating massage is applied to the intended body part. With models VSW1 and VSM1, the slipper functions as the component of the apparatus which holds the massaging component in place, allowing massage to be applied to the foot. In light of the above analysis, we find that the VSW1 and VSM1 are goods classifiable pursuant to GRI 1, under heading 9019. Both models are classified in subheading 9019.10.2030, HTSUSA. This determination is consistent with that of Headquarters Ruling Letter (HQ) 960032, dated December 6, 1999, in which we classified a textile travel slipper with a battery-operated massaging device under subheading 9019.10.2030, HTSUSA pursuant to GRI 1.

While we find that the terms of the heading and the guidance provided by the EN indicate that heading 9019, HTSUSA, is sufficiently broad to cover both of the components of the VSW1 and VSM1, we do not find that the heading is broad enough to cover all of the components of the model VSW1G. The VSW1G consists of three individual components, a slipper, a massaging mechanism, and a gel pack. We find that the scope of this heading is not broad enough to cover the gel pack. The gel pack, individually, is classifiable under heading 3824, HTSUSA, which provides for, among other things, chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included.

As heading 9019, HTSUSA, is not sufficiently broad to cover the complete article and at least two of the components of the model VSW1G are classifiable in different headings, the complete good cannot be classified by reference to GRI 1. In pertinent part, GRI 2(b) states: “[t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.” GRI 3(a) directs that the headings are regarded as equally specific when they each refer to part only of the materials contained in mixed or composite goods. We next look to GRI 3(b), which states

in part that: “composite goods . . . which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.”

The applicability of GRI 3(b) is dependent upon whether the complete article is deemed to comprise a composite good. In pertinent part, EN IX to GRI 3(b) indicates that:

For purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

In this instance, although the gel pack is separable from the massaging mechanism and the slipper, the components are adapted to each other and are mutually complementary. The massaging mechanism is embedded in the slipper’s midsole and cannot be removed. The slipper has a compartment expressly designed to hold the gel pack. The massaging unit, the slipper and the gel pack are specifically designed to be used together so that the user receives a heated foot massage. It is not likely that the massaging unit and the slipper, with its gel pack compartment, would be sold without the gel pack. If the massaging units and slippers did not include the gel packs, the user would need to search for and purchase gel packs that are not only capable of being heated, but also sized to fit into the slippers. In light of the above, we find that the massaging unit, the slipper, and the gel pack constitute a composite good.

In order to determine the essential character of the composite article, we first look to EN VIII to GRI 3(b), which provides the following guidance:

The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

We find that the primary purpose of the instant merchandise is to provide the user with a heated massage. The massaging mechanism plays a significant role in accomplishing this purpose. The slipper functions as the component which holds the massaging component in place, allowing massage to be applied to the foot. Although the gel pack provides an important feature (i.e., heat) that may enhance the user’s experience, the massage unit remains the component responsible for producing the article’s main function. Therefore, we find that the massaging mechanism imparts the essential character to the composite article and that the article is classifiable in accordance with the massaging mechanism.

HOLDING:

The Conair™ massaging slippers identified as models VSW1, VSM1, and VSW1G, are classified in subheading 9019.10.2030, HTSUSA, the provision for “Mechano-therapy appliances and massage apparatus; parts and accessories thereof, Massage apparatus: Electrically operated: Battery powered: Other.” The general column one duty rate is free.

NY J87028 and NY K81794, dated August 21, 2003, and February 4, 2004, respectively, are hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Cynthia Reese for MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF "CHOCOLATE LENTILS"

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of chocolate lentils.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States, (HTSUS), of a product referred to as chocolate lentils and any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before December 3, 2004.

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

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202-572-8778.

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 a ruling letter pertaining to the tariff classification of a product referred to as chocolate lentils. Although in this notice CBP is specifically referring to one ruling, New York Ruling Letter (NY) I86136, dated September 25, 2002, 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. This notice 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 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 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 their agents for importations of merchandise subsequent to this notice.

In NY I86136, dated September 25, 2002, the classification of a product commonly referred to as chocolate lentils was determined to be in subheading 1806.90.9090, HTSUS, which provides for Chocolate and other food preparations containing cocoa: other: other: other . . . other. This ruling letter is set forth in "Attachment A" to this document. Since the issuance of that ruling, CBP has had a chance to review the classification of this merchandise and has determined that the classification is in error. Based on this review, CBP has determined that the correct classification of the chocolate lentils is in subheading 1806.90.4900, HTSUS, which provides for Chocolate and other food preparations containing cocoa: other: other: articles containing over 65 percent by dry weight of sugar described in additional U.S. Note 2 to chapter 17 . . . other.

CBP, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY I86136, 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) 966723 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: October 15, 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 I86136

September 25, 2002

CLA-2-18:RR:NC:SP:232 I86136

CATEGORY: Classification

TARIFF NO.: 1806.90.9090

MR. RICHARD R. WOHLRAB
LE COPPERSMITH, INC.
AIOP Bldg. A3W
145 Hook Creek Blvd.
Valley Stream NY 11581

RE: The tariff classification of Small Chocolate Lentils from Sweden

DEAR MR. WOHLRAB:

In your letter dated September 6, 2002 you requested a tariff classification ruling.

Samples were submitted with your request. The subject merchandise consists of a chocolate center coated with a hard sugar glaze in different colors. It is stated to contain 68 percent sugar, 10 percent cocoa butter, 9 percent cocoa liquor, 9 percent whole milk powder, 3 percent whey powder and small quantities of various other ingredients. The merchandise will be used by bakeries as decorations on cakes, pastries and inside cookies.

The applicable subheading for the Small Chocolate Lentils will be 1806.90.9090, Harmonized Tariff Schedule of the United States (HTS), which provides for Chocolate and other food preparations containing cocoa: Other: Other: Other . . . Other. The rate of duty will be 6 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 John Maria at 646-733-3031.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966723
CLA-2 RR:CR:GC 966723ptl
CATEGORY: Classification
TARIFF NO.: 1806.90.4900

MR. RICHARD R. WOHLRAB
LE COPPERSMITH, INC.
AIOP Bldg. A3W
145 Hook Creek Blvd.
Valley Stream, NY 11581

RE: Classification of Small Chocolate Lentils, NY I86136 revoked

DEAR MR. WOHLRAB:

New York Ruling (NY) I86136, was issued to you on September 25, 2002, by the Customs and Border Protection (CBP) National Commodity Specialist Division, in New York, concerning the classification of small chocolate lentils under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). That ruling classified the lentils in subheading 1806.90.9090, HTSUSA, which provides for chocolate and other food preparations containing cocoa: other: other: other: . . . other. Since that ruling was issued, CBP has determined that the classification provided therein is incorrect. This ruling provides the correct classification for the chocolate lentils and the reasoning supporting the classification.

FACTS:

Information provided indicates that the goods referred to as "Small Chocolate Lentils" are small lentil-shaped articles with chocolate centers which are coated with a hard glaze of different colors. The product will be used by bakeries as decorations on cakes and pastries, and inside cookies. The product's ingredients are said to be: sugar, 68 percent; cocoa butter, 10 percent; cocoa liquor, 9 percent; whole milk powder, 9 percent; whey powder, 3 percent. A variety of additional ingredients are said to make up a total of approximately 1 percent of the product. The product will be packaged in 37 lb. cartons for importation.

ISSUE:

What is the classification of small chocolate lentils to be used as decorations on cakes and pastries and inside cookies?

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 order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, pro-

vide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS subheadings under consideration are as follows:

1806	Chocolate and other food preparations containing cocoa:
	* * *
1806.90	Other:
	Other:
	Other:
	Articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17:
1806.90.4500	Described in additional U.S. note 7 to chapter 17 and entered pursuant to its provisions
1806.90.4900	Other 2/ .
	* * *
1806.90.90	Other
	* * *
1806.90.9090	Other

2/ See subheadings 9904.17.17-9904.17.48.

The articles being classified are small edible chocolate objects which are to be used in bakeries as decorations on cakes and pastries or ingredients in cookies. From information provided regarding the product's ingredients, we know the goods are said to contain 68 percent sugar. With this amount of sugar in the product, we must determine whether it is described by Additional U.S. Note 2 to Chapter 17.

Additional U.S. Note 2 to Chapter 17, reads as follows:

2. For the purposes of this schedule, the term "articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17" means articles containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported.

Additional U.S. Note 2, Section IV, HTSUS, defines the terms of Additional U.S. Notes 2 and 3, Chapter 17, HTSUS, as follows:

For the purposes of this section, unless the context otherwise requires—

(a) the term "percent by dry weight" means the sugar content as a percentage of the total solids in the product;

(b) the term “capable of being further processed or mixed with similar or other ingredients” means that the imported product is in such condition or container as to be subject to any additional preparation, treatment or manufacture or to be blended or combined with any additional ingredient, including water or any other liquid, other than processing or mixing with other ingredients performed by the ultimate consumer prior to consumption of the product;

(c) the term “prepared for marketing to the ultimate consumer in the identical form and package in which imported” means that the product is imported in packaging of such sizes and labeling as to be readily identifiable as being intended for retail sale to the ultimate consumer without any alteration in the form of the product or its packaging; and

(d) the term “ultimate consumer” does not include institutions such as hospitals, prisons and military establishments or food service establishments such as restaurants, hotels, bars or bakeries.

In HQ 960694, dated March 20, 1998, CBP (then “Customs”) discussed the classification of white dipping icing, donut glaze and chocolate dipping icing. The products all contained over 65 percent by dry weight sugar, and were imported in ready-to-use condition. The products were used, as imported, to frost of glaze donuts or other bakery goods by dipping the baked goods in the icing or glaze.

In summarizing its decision that the icing and glazing products were covered by the description of Additional U.S. Note 2, HQ 960694 stated: “The toppings and the ‘untopped’ donuts, pastries, or cakes are components combined to make finished goods. Therefore, we find that the toppings are capable of being combined with additional ingredients, to wit, donuts, pastries, or cakes.”

The chocolate lentils classified in NY I86136 are decorative components that will be combined by commercial bakers with other ingredients (cakes, pastries and cookie dough). Accordingly, they are goods described by Additional U.S. Note 2 to Chapter 17. As such they should not have been classified in subheading 1806.90.9090, HTSUSA, as other products other than those described by the Additional U.S. Note. The chocolate lentils are properly classified in subheading 1806.90.4900, HTSUSA, the subheading for chocolate goods described by Additional U.S. Note 2 to Chapter 17.

HOLDING:

Small chocolate lentils, containing 68 percent sugar, that are used by bakeries as decorations on cakes, pastries and inside cookies are classified in subheading 1806.90.4900, HTSUSA, which provides for: Chocolate and other food preparations containing cocoa: Other: Other: Other: Other: Articles containing over 65 percent by dry weight of sugar described in additional U.S. note 2 to chapter 17: Other. The duty rate will be 37.2 cents per kilogram plus 6 percent *ad valorem*. In addition, products classified in subheading 1806.90.4900, HTSUSA, will be subject to additional duties based on their value, as described in subheadings 9904.17.17 to 9904.17.48, HTSUS. 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.

NY I86136, dated September 25, 2002, is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division,

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN DVDs

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of DVDs (“digital versatile discs,” formerly referred to as “digital video discs”).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking a ruling letter pertaining to the tariff classification of certain DVDs, and revoking any treatment previously accorded by CBP to substantially identical merchandise. Notice of the proposed action was published on September 8, 2004, in the *Customs Bulletin*, Volume 38, Number 37.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 2, 2005.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Textiles Branch, at (202) 572-8811.

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 responsibil-

ity 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 proposing to revoke New York Ruling Letter (NY) K80348, dated November 4, 2003, was published on September 8, 2004, in the *Customs Bulletin*, Volume 38, Number 37. No comments were received in response to the notice. As stated in the notice of proposed revocation, the notice covered any rulings relating to the specific issues of tariff classification set forth in the ruling, which may exist but have not been specifically identified. 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 issues subject to this notice should have advised CBP during the 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 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 that was issued to a third party to importations involving the same or a similar issue, or the importer's or CBP's previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised CBP during the 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 subsequent to the effective date of the final decision on this notice.

In NY K80348, dated November 4, 2003, merchandise identified as "Karaoke DVD Country Party Songs and Teen Hits" was classified in subheading 8524.39.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which in pertinent part provides for "Records . . . and other recorded media for sound or other similarly recorded phenomena . . . : Discs for laser reading systems: Other: For reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded discs."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY K80348 and any other rulings not specifically identified, to reflect the proper

classification of the DVDs according to the analysis in Headquarters Ruling Letter (HQ) 967184, which is an "Attachment" to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: October 20, 2004

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

Attachment

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967184
Date: October 20, 2004
CLA-2 RR:CR:TE 967184 GGD
CATEGORY: Classification
TARIFF NO.: 8524.39.8000

ROBERT A. MONATH, ESQUIRE
1131/2 West Council Street
Salisbury, North Carolina 28144

RE: Revocation of NY K80348; "Karaoke DVD Country Party Songs and Teen Hits;" Recorded Media Without Image

DEAR MR. MONATH:

In New York Ruling Letter (NY) K80348, issued to you November 4, 2003, on behalf of your client, Slep-Tone Entertainment Corporation, dba Sound Choice, merchandise identified as "Karaoke DVD Country Party Songs and Teen Hits" was classified in subheading 8524.39.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which in pertinent part provides for "Records . . . and other recorded media for sound or other similarly recorded phenomena . . . : Discs for laser reading systems: Other: For reproducing representations of instructions, data, sound, and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded discs." We have reviewed NY K80348 and have found it to be in error. Therefore, this ruling revokes NY K80348.

Pursuant to section 625(c), 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, 2186 (1993), notice of the proposed revocation of NY K80348, was

published on September 8, 2004, in the *Customs Bulletin*, Volume 38, Number 37. No comments were received in response to the notice.

FACTS:

In NY K80348, the items at issue were entitled “Karaoke DVD Country Party Songs and Teen Hits,” and were described as being recorded media with the characteristics of instructions, data, sound and image. The items could be used and played on a DVD (digital versatile disc) drive of an ADP (automatic data processing) machine, as well as on a Karaoke machine or a DVD player. In use, the items allow the display of performance tracks with music, on-screen text and vocal demonstration tracks.

ISSUE:

Whether the recorded media at issue are classified in subheading 8524.39.4000, HTSUSA, or in subheading 8524.39.8000, HTSUSA.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

In pertinent part, subheading 8524.39.4000, HTSUSA, provides for recorded media for reproducing representations of instructions, data, sound and image. We find that, although the “Karaoke DVD Country Party Songs and Teen Hits” display performance tracks with music and text, they are not used for reproducing representations of image. By virtue of GRI 3(a) and 6, they are not accurately described in that subheading. Instead they are completely and specifically described in subheading 8524.39.8000.

HOLDING:

The merchandise identified as “Karaoke DVD Country Party Songs and Teen Hits” is classified in subheading 8524.39.8000, HTSUSA, the provision for “Records . . . and other recorded media for sound or other similarly recorded phenomena . . . : Discs for laser reading systems: Other: Other.” The general column one rate of duty is 2.7 percent ad valorem.

NY K80348, dated November 4, 2003, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

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

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF MEN'S SHIRTS MADE OF 100 PERCENT WOVEN BAMBOO FABRIC; NOT TRANSFORMED TO A MAN-MADE FABRIC

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

ACTION: Notice of the proposed revocation of a tariff classification ruling letter and revocation of any treatment relating to the classification of men's shirts made of 100 percent woven bamboo fabric.

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 one ruling letter relating to the tariff classification of men's shirts under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before December 3, 2004.

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

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textiles Branch, (202) 572-8822.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with 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. section 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of men's shirts. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) K80132, dated October 30, 2003 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should 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 in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY K80132, CBP ruled that two men's shirts, identified as Styles BD12856-03 and BD12640-05 were properly classified in subheading 6205.30.2070, HTSUSA, which provides for "Men's or boys' shirts: Of man-made fibers: Other: Other, Other: Other: Men's." Since the issuance of this ruling, CBP has reviewed the classification of these items and has determined that the cited ruling is in error. Based on a review of CBP laboratory findings for the subject

garments, we are now of the opinion that both shirts are made of vegetable fibers other than cotton. Accordingly, the shirts are properly classified in subheading 6205.90.4040, HTSUSA, which provides for "Men's or boys' shirts: Of other textile materials: Other, Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY K80132, dated October 30, 2003, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967187 (Attachment B). However, HQ 967187 is not applicable to garments constructed of 100 percent bamboo fabric where the fiber has been transformed to a man-made material. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: October 19, 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 K80132
October 30, 2003
CLA-2-62:RR:NC:WA:355 K80132
CATEGORY: Classification
TARIFF NO.: 6205.30.2070

MR. DOUGLAS HWEE
COMET CUSTOMS BROKERS, INC.
420 West Merrick Road
Valley Stream, NY 11580

RE: The tariff classification of men's shirts from China

DEAR MR. HWEE:

In your letter received October 27, 2003, you requested a classification ruling on behalf of Martin Design Group, Ltd.

You submitted samples of two shirts, identified as styles BD12856-03 and BD12640-05. You state that both of these shirts are made of 100% woven bamboo fabric. They are both sized "M". Style BD12640-05 is a white shirt, solid in color, featuring a button down collar; short sleeves; a left over right full front opening secured by seven buttons; a left chest pocket; and a curved

hemmed bottom. Style BD12856-03 is a solid sand colored shirt, featuring a spread collar; short sleeves; a left over right full front opening secured by seven buttons; a left chest pocket; and a curved hemmed bottom. These samples will be returned as you have requested.

The applicable subheading for styles BD 12856-03 and BD12640-05 will be 6205.30.2070, Harmonized Tariff Schedule of the United States (HTS), which provides for men's or boys' shirts, of man-made fibers, other, other, other, other, men's. The duty rate will be 29.3¢/kg plus 26.1% ad valorem.

Styles BD12856-03 and BD12640-05 fall within textile category designation 640. 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 Camille R. Ferraro at 646-733-3046.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967187
CLA-2 RR:CR:TE 967187 ASM
CATEGORY: Classification
TARIFF NO.: 6205.90.4040

SAMUEL FOCARINO, PRESIDENT
COMET CUSTOMS BROKERS INC.
420 West Merrick Road
Valley Stream, NY 11580

RE: Request for reconsideration and Revocation of NY K80132; classification of men's shirts made of 100 percent woven bamboo fabric; not transformed to a man-made fabric

DEAR MR. FOCARINO:

This is in response to a letter, dated February 27, 2004, that you submitted on behalf of your client, Martin Design Group, requesting reconsidera-

tion of Customs and Border Protection (CBP) New York Ruling Letter (NY) K80132, dated October 30, 2003, which classified men's shirts under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes NY K80132 by providing the correct classification under the HTSUSA. Fabric samples were submitted to this office for examination.

FACTS:

NY K80132, identified two men's shirts: Styles BD12856-03 and BD12640-05. Style BD12856-03 was described as a solid sand colored shirt, featuring a spread collar; short sleeves, a left over right full front opening secured by seven buttons, a left chest pocket, and a curved hemmed bottom. Style BD12640-05 was described as a white shirt, solid in color, featuring a button down collar, short sleeves, a left over right full front opening secured by seven buttons, a left chest pocket, and a curved hemmed bottom.

In NY K80132, the subject garments were both classified in subheading 6205.30.2070, HTSUSA, which provides for "Men's or boys' shirts: Of man-made fibers: Other: Other: Other: Other: Men's". Your client disagreed with this classification and has always maintained that the fabric is 100 percent woven bamboo fiber, which would make the shirts classifiable in subheading 6205.90.4040, HTSUSA, which provides for "Men's or boys' shirts: Of other textile materials: Other, Other."

ISSUE:

What is the proper classification for the merchandise?

LAW AND ANALYSIS:

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

Upon receiving the request for reconsideration of NY K80132, the subject garments were sent to the CBP Office of Laboratories and Scientific Services for fiber analysis. The CBP laboratory has now confirmed that the shirts are made of vegetable fibers other than cotton. Furthermore, the CBP laboratory report included a definitive statement that the shirts were not made of rayon fiber.

In view of the foregoing, we are now of the opinion that the shirts are constructed of fabric which is formed from 100 percent bamboo fibers and are properly classified in subheading 6205.90.4040, HTSUSA, which provides for men's shirts ". . . Of other textile materials." However, it is important to note that this ruling is not applicable to garments constructed of 100 percent bamboo fabric where the fiber has been transformed to a man-made material.

HOLDING:

NY K80132, dated October 30, 2003, is hereby revoked.

The subject merchandise, identified as men's shirts (Styles BD12856-03 and BD12640-05), is correctly classified in subheading 6205.90.4040, HTSUSA, which provides for "Men's or boys' shirts: Of other textile materials: Other, Other." The general column one duty rate is 2.8 percent *ad valorem*. The textile category is 840.

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

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.



PROPOSED REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN DINNERWARE SETS

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

ACTION: Notice of proposed revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of certain dinnerware sets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs & Border Protection (CBP) intends to revoke two ruling letters relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain dinnerware sets. 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 December 3, 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 two ruling letters relating to the tariff classification of certain dinnerware sets. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) 875541, dated July 13, 1992 (Attachment A), and NY A86799, dated September 17, 1996 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the two identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP in-

tends 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 both NY 875541 and NY A86799, pursuant to General Rule of Interpretation 3(c), certain dinnerware sets composed of stoneware, glassware, and flatware articles were classified in subheading 8215.20.0000, HTSUSA, which provides for "Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof: Other sets of assorted articles." A recent review of both rulings showed that the rates of duty for the dinnerware sets were not properly determined.

Pursuant to 19 U.S.C. 1625 (c)(1), CBP intends to revoke NY 875541 and NY A86799, and any other ruling not specifically identified, to reflect the proper classification of the merchandise and duty determination pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967248 (Attachment C) and HQ 967249 (Attachment D). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: October 19, 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 875541
July 13, 1992
CLA-2-82:S:N:N1:119 875541
CATEGORY: Classification
TARIFF NO.: 8215.20.0000-8211.91.5060

MS. SUSAN R. McCABE
THE HIPAGE COMPANY, INC.
P.O. Box 3158 Custom House Station
Norfolk, VA 23514

RE: The tariff classification of a dinnerware set from China

DEAR MS. McCABE:

In your letter dated May 7, 1992 (resubmitted June 19, 1992), you requested a tariff classification ruling on behalf of Heilig Meyers, 2235 Staple Mills Road, Richmond, VA 23230.

The merchandise to be imported is a 52 piece dinnerware set packaged for retail and consisting of the following:

Stoneware: Dinner plates, dessert plates, soup bowls and mugs (4 each).

Flatware with plastic handles: Knives, forks, spoons and teaspoons (4 each).

Glassware: 12 oz. and 8 oz. tumblers (4 each).

Place mat set: place mats, coasters, napkin twists (4 each).

The merchandise is a set without essential character and is therefore classifiable under the heading which occurs last in numerical order among those which equally merit consideration. In this case the heading for the flatware set applies to the complete dinnerware set.

The applicable subheading for the dinnerware set will be 8215.20.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for spoons, forks, ladles . . . other sets of assorted articles. The rate of duty will be the rate applicable to that article in the flatware set subject to the highest rate of duty. In this case the rate of the knife, one cent each plus 5.7 percent for subheading 8211.91.5060, is the highest and applies to the complete set. The specific rate (1 cent each) is assessed on each article in the dinnerware set.

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

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

JEAN F. MAGUIRE,
Area Director New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY A86799
September 17, 1996
CLA-2-82:R:N4:119 A86799
CATEGORY: Classification
TARIFF NO.: 8215.20.0000-8211.91.5060

MS. PAMELA T. ROSE
HEILIG-MEYERS
2235 Staples Mill Road
Richmond, VA 23230

RE: The tariff classification of a dinnerware set (Homemakers Set) from China

DEAR MS. ROSE:

In your letter dated August 8, 1996 you requested a tariff classification ruling.

The merchandise to be imported is a 56 piece dinnerware set packaged for retail and consisting of the following:

Stoneware: Dinner plates, dessert plates, soup bowls and mugs (6 each)

Flatware with plastic handles: Knives, forks, spoons and teaspoons (6 each)

Glassware: 12 oz. highball glasses and 12 oz. on-the-rocks glasses (4 each)

The merchandise is a set without essential character and is therefore classifiable under the heading which occurs last in numerical order among those which equally merit consideration. In this case the heading for the flatware set applies to the complete dinnerware set.

The applicable subheading for the dinnerware set will be 8215.20.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for spoons, forks, ladles . . . other sets of assorted articles. The rate of duty will be the rate applicable to that article in the flatware set subject to the highest rate of duty. In this case the rate of the knife, 0.4 cent each plus 5.6 percent for subheading 8211.91.5060, is the highest and applies to the complete set. The specific rate (0.4 cent each) is assessed on each article in the dinnerware set. This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

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

If you have any questions pertaining to this matter, please contact National Import Specialist Jacques Preston of this office at (212) 466-5488.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967248
CLA-2: RR:CR:TE: 967248 BtB
CATEGORY: Classification
TARIFF NO.: 8215.20.0000

MS. SUSAN R. MCCABE
THE HIPAGE COMPANY, INC.
P.O. Box 3158
Custom House Station
Norfolk, VA 23514

RE: Dinnerware set from China; NY 875541 revoked

DEAR MS. MCCABE:

This is in reference to New York Ruling Letter (NY) 875541, dated July 13, 1992, issued to you by the Bureau of Customs and Border Protection (CBP), formerly known as the U.S. Customs Service, regarding the classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a certain dinnerware set made in China. We have reconsidered NY 875541 and have determined that the rate of duty set forth for the dinnerware set in the ruling is incorrect. This ruling revokes NY 875541 and advises how the duty rate for merchandise classified under subheading 8215.20.0000, HTSUSA, is calculated.

The records relating to the dinnerware set, previously stored in our former 6 World Trade Center office in New York City, were destroyed as a result of the terrorist incident on September 11, 2001. The only information regarding the dinnerware set that we currently have is the text of NY 875541. Due to our current lack of product information, we are unable to issue a revised duty rate for the dinnerware set at this time.

FACTS:

The instant dinnerware set is a 52-piece dinnerware set packaged for retail and consisting of stoneware, flatware, and glassware. The set includes four pieces of each of the following stoneware: dinner plates, dessert plates, soup bowls and mugs. It includes a flatware set with four pieces of each of the following: knives, forks, spoons, and teaspoons. The flatware has plastic handles. The set also includes four pieces of each of the following glassware: 12 oz. tumblers and 8 oz. tumblers.

In NY 875541, we classified the dinnerware set under subheading 8215.20.0000, HTSUSA, which provides for "Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof; Other sets of assorted articles." The ruling states that "The rate of duty [for the set] will be the rate applicable to that article in the flatware set subject to the highest rate of duty." The knife (determined to be classifiable under subheading 8211.91.5060, HTSUSA) was found to be the article in the flatware set subject to the highest rate of duty and its duty rate (1¢ + 5.7% *ad valorem* at the time) was held to apply to the dinnerware set. The ruling notes that the specific rate (1¢ each) is to be assessed on each article in the dinnerware set.

ISSUE:

What is the rate of duty applicable to the dinnerware set?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the Harmonized System is such that virtually all goods are classified by GRI 1, that is, 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 GRIs may then be applied, in order.

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

In NY 875541, we held that the articles in the instant dinnerware set were goods put up in a set for retail sale. We ruled that the set was without an essential character¹ and, therefore, classifiable pursuant to GRI 3(c) which provides that: "When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

In NY 875541, the heading occurring last in numerical order among those which equally merited consideration was heading 8215, HTSUSA (applicable to the flatware set).² Accordingly, we classified the instant dinnerware set in subheading 8215.20.0000, HTSUSA. The general rate of duty applicable to merchandise classified in subheading 8215.20.0000 is set forth in the HTSUSA as: "The rate of duty applicable to the article in the set subject to the highest rate of duty."

However, in regard to the rate of duty applicable to the dinnerware set classified in subheading 8215.20.0000, HTSUSA, NY 875541 states:

The rate of duty will be the rate applicable to that article in the **flatware set** subject to the highest rate of duty. (Emphasis added).

This statement in NY 875541 is not correct. The rate of duty applicable to merchandise classified in subheading 8215.20.0000, HTSUSA, is the highest rate of duty applicable to an article in the **set** subject to the highest rate of duty, **not** the highest rate of duty applicable to an article in a **flatware set**

¹ While not stated in the ruling, the set was found to be without an essential character because all articles in the set were determined to be functionally equivalent. *Compare* HQ 950833, dated January 17, 1992, in which we found a substantially similar dinnerware set to be without a component which imparts an essential character, finding that all the articles in the set to be "functionally equivalent" and classifying the set pursuant to GRI 3(c).

² While not stated in the text of NY 875541, the stoneware in the set was classifiable in heading 6912, HTSUS (which provides for, among other articles, "Ceramic tableware, kitchenware . . ."), and the glassware was classifiable in heading 7013, HTSUS (which provides for, among other articles, "Glassware of a kind used for table, kitchen . . .").

in the set. In ascertaining the highest rate of duty applicable to a set classified in subheading 8215.20.0000, HTSUSA, one must consider the duty rate of each and every article in the entire set, not just the duty rates applicable to articles in a flatware set. We note that it is possible for an article in a flatware set to be the article in the set with the highest rate of duty.

When a set classified in subheading 8215.20.0000, HTSUSA, consists solely of articles that all have *ad valorem* rates of duty, those rates are simply compared against each other and the rate of duty applicable to the article in the set subject to the highest rate of duty applies to the entire set. When a set classified in subheading 8215.20.0000, HTSUSA, consists completely or partially of articles with compound duty rates, the compound duty rates must be converted to equivalent *ad valorem* rates. Once all the rates have been converted to *ad valorem* rates, they are compared against each other and the rate of duty applicable to the article in the set subject to the highest rate of duty applies to the entire set. If an article with a compound duty rate is determined to be the article in the set subject to the highest rate of duty, the compound duty rate (not the compound duty rate converted to an *ad valorem* rate) is applied to the set. When assessing compound duty rates on a set, the *ad valorem* part of the rate of duty is assessed on the total value of the set and the specific duty is assessed on each article in the set. See HQ 088521, dated May 13, 1991.

To convert a compound duty rate to an equivalent *ad valorem* rate, one (i) obtains the unit value of each article, (ii) applies the article's listed compound rate of duty, and (iii) calculates the "equivalent *ad valorem* rate" by computing the percentage of the article's value that the compound rate of duty amounts to. For example, suppose that a set classified in subheading 8215.20.0000, HTSUSA, includes a knife that is separately classifiable in subheading 8211.91.5000, HTSUSA. The applicable rate of duty for the knife is "0.7¢ + 3.7%," a compound duty rate that must be converted to an equivalent *ad valorem* rate to determine if the knife's rate is the highest rate of duty for articles in the set. Suppose that there are four knives included in the set and their total value is 32¢. To obtain the unit value of a knife (i.e., the value of one knife), we divide 32¢ by 4 which equals 8¢. Now, we apply the knife's listed compound duty rate. Plugging 8¢ into the duty rate, we get $0.7¢ + 3.7\%(8¢)$. This equals .996¢ per knife, which amounts to 12.45% of the knife's value (i.e., .996 is 12.45% of 8¢). Therefore, 12.45% is the knife's equivalent *ad valorem* rate. The knife's rate of duty would then have to be compared against the rates of duty applicable to the other articles in the set to determine if it is the highest duty rate in the set, and thus applicable to the entire set.

In NY 875541, we erroneously failed to consider the duty rate of each and every article in the dinnerware set when searching for the rate of duty applicable to the dinnerware set. Instead, we only considered the rates of duty for articles in the flatware set. As a result, the knife (determined to be classifiable under subheading 8211.91.5060, HTSUSA) was found to be the article in the flatware set subject to the highest rate of duty and its duty rate (1¢ + 5.7% *ad valorem* at the time) was held to apply to the dinnerware set.

While the only information that we have about the dinnerware set is the text of NY 875541, using the rate of duty applicable to the knife as the rate of duty for the dinnerware set is erroneous. While we cannot calculate the rate of duty in effect in 1992 for every item in the dinnerware set due to our lack of information (i.e., it is impossible to convert compound duty rates to

equivalent *ad valorem* rates without knowing an article's value), certain articles in the set were subject to such high duty rates (e.g., the glassware in the set was subject to a 38% *ad valorem* rate of duty in 1992), that it is unlikely that the knife was the article in the set subject to the highest rate of duty.

HOLDING:

NY 875541, dated July 13, 1992, is hereby revoked.

Due to our current lack of information about the dinnerware set (specifically, the value of articles in the set), we are unable to provide a rate of duty for the dinnerware set at this time. We invite you to request a new ruling on the dinnerware set pursuant to Section 177 of the Customs Regulations to obtain a ruling that sets forth the effective rate of duty on the merchandise.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

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

HQ 967249
CLA-2: RR:CR:TE: 967249 BtB
CATEGORY: Classification
TARIFF NO.: 8215.20.0000

MS. PAMELA T. ROSE
HEILIG-MYERS
2235 Staples Mill Road
Richmond, VA 23230

RE: Dinnerware set (Homemakers Set) from China; NY A86799 revoked

DEAR MS. ROSE:

This is in reference to New York Ruling Letter (NY) A86799, dated September 17, 1996, issued to you by the Bureau of Customs and Border Protection (CBP), formerly known as the U.S. Customs Service, regarding the classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a certain dinnerware set made in China. We have reconsidered NY A86799 and have determined that the rate of duty set forth for the dinnerware set in the ruling is incorrect. This ruling revokes NY A86799 and advises how the duty rate for merchandise classified under sub-heading 8215.20.0000, HTSUSA, is calculated.

The records relating to the dinnerware set, previously stored in our former 6 World Trade Center office in New York City, were destroyed as a result of the terrorist incident on September 11, 2001. The only information regarding the dinnerware set that we currently have is the text of NY A86799. Due to our current lack of product information, we are unable to issue a revised duty rate for the dinnerware set at this time.

FACTS:

The instant dinnerware set is known as Homemakers Set. It is a 56-piece dinnerware set packaged for retail and consisting of stoneware, flatware, and glassware. The set includes six pieces of each of the following ceramic stoneware: dinner plates, dessert plates, soup bowls and mugs. It includes a flatware set with six pieces of each of the following flatware: knives, forks, spoons, and teaspoons. The flatware has plastic handles. The set also includes four pieces each of the following glassware: 12 oz. highball glasses and 12 oz. on-the-rocks glasses.

In NY A86799, we classified the dinnerware set under subheading 8215.20.0000, HTSUSA, which provides for "Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof: Other sets of assorted articles." The ruling states that "The rate of duty [for the set] will be the rate applicable to that article in the flatware set subject to the highest rate of duty." The knife (determined to be classifiable under subheading 8211.91.5060, HTSUSA) was found to be the article in the flatware set subject to the highest rate of duty and its duty rate (0.4¢ + 5.6% *ad valorem* at the time) was held to apply to the dinnerware set. The ruling notes that the specific rate (0.4¢ each) is to be assessed on each article in the dinnerware set.

ISSUE:

What is the rate of duty applicable to the dinnerware set?

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the Harmonized System is such that virtually all goods are classified by GRI 1, that is, 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 GRIs may then be applied, in order.

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

In NY A86799, we held that the articles in the instant dinnerware set were goods put up in a set for retail sale. We ruled that the set was without an essential character¹ and, therefore, classifiable pursuant to GRI 3(c) which provides that: "When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

¹ While not stated in the ruling, the set was found to be without an essential character because all articles in the set were determined to be functionally equivalent. *Compare* HQ 950833, dated January 17, 1992, in which we found a substantially similar dinnerware set to be without a component which imparts an essential character, finding that all the articles in the set to be "functionally equivalent" and classifying the set pursuant to GRI 3(c).

In NY A86799, the heading occurring last in numerical order among those which equally merited consideration was heading 8215, HTSUSA (applicable to the flatware set).² Accordingly, we classified the instant dinnerware set in subheading 8215.20.0000, HTSUSA. The general rate of duty applicable to merchandise classified in subheading 8215.20.0000 is set forth in the HTSUSA as: “The rate of duty applicable to the article in the set subject to the highest rate of duty.”

However, in regard to the rate of duty applicable to the dinnerware set classified in subheading 8215.20.0000, HTSUSA, NY A86799 states:

The rate of duty will be the rate applicable to that article in the **flatware set** subject to the highest rate of duty. (Emphasis added).

This statement in NY A86799 is not correct. The rate of duty applicable to merchandise classified in subheading 8215.20.0000, HTSUSA, is the highest rate of duty applicable to an article in the **set** subject to the highest rate of duty, **not** the highest rate of duty applicable to an article in a **flatware set** in the set. In ascertaining the highest rate of duty applicable to a set classified in subheading 8215.20.0000, HTSUSA, one must consider the duty rate of each and every article in the entire set, not just the duty rates applicable to articles in a flatware set. We note that it is possible for an article in a flatware set to be the article in the set with the highest rate of duty.

When a set classified in subheading 8215.20.0000, HTSUSA, consists solely of articles that all have *ad valorem* rates of duty, those rates are simply compared against each other and the rate of duty applicable to the article in the set subject to the highest rate of duty applies to the entire set. When a set classified in subheading 8215.20.0000, HTSUSA, consists completely or partially of articles with compound duty rates, the compound duty rates must be converted to equivalent *ad valorem* rates. Once all the rates have been converted to *ad valorem* rates, they are compared against each other and the rate of duty applicable to the article in the set subject to the highest rate of duty applies to the entire set. If an article with a compound duty rate is determined to be the article in the set subject to the highest rate of duty, the compound duty rate (not the compound duty rate converted to an *ad valorem* rate) is applied to the set. When assessing compound duty rates on a set, the *ad valorem* part of the rate of duty is assessed on the total value of the set and the specific duty is assessed on each article in the set. See HQ 088521, dated May 13, 1991.

To convert a compound duty rate to an equivalent *ad valorem* rate, one (i) obtains the unit value of each article, (ii) applies the article's listed compound rate of duty, and (iii) calculates the “equivalent *ad valorem* rate” by computing the percentage of the article's value that the compound rate of duty amounts to. For example, suppose that a set classified in subheading 8215.20.0000, HTSUSA, includes a knife that is separately classifiable in subheading 8211.91.5000, HTSUSA. The applicable rate of duty for the knife is “0.7¢ + 3.7%,” a compound duty rate that must be converted to an equivalent *ad valorem* rate to determine if the knife's rate is the highest

² While not stated in the text of NY A86799, the ceramic articles in the set were classifiable in heading 6912, HTSUS (which provides for, among other articles, “Ceramic tableware, kitchenware . . .”), and the glassware was classifiable in heading 7013, HTSUS (which provides for, among other articles, “Glassware of a kind used for table, kitchen . . .”).

rate of duty for articles in the set. Suppose that there are six knives included in the set and their total value is 48¢. To obtain the unit value of a knife (i.e., the value of one knife), we divide 48¢ by 6 which equals 8¢. Now, we apply the knife's listed compound duty rate. Plugging 8¢ into the duty rate, we get $0.7¢ + 3.7\%(8¢)$. This equals .996¢ per knife, which amounts to 12.45% of the knife's value (i.e., .996 is 12.45% of 8¢). Therefore, 12.45% is the knife's equivalent *ad valorem* rate. The knife's rate of duty would then have to be compared against the rates of duty applicable to the other articles in the set to determine if it is the highest duty rate in the set, and thus applicable to the entire set.

In NY A86799, we erroneously failed to consider the duty rate of each and every article in the dinnerware set when searching for the rate of duty applicable to the dinnerware set. Instead, we only considered the rates of duty for articles in the flatware set. As a result, the knife (determined to be classifiable under subheading 8211.91.5060, HTSUSA) was found to be the article in the flatware set subject to the highest rate of duty and its duty rate ($0.4¢ + 5.6\%$ *ad valorem* at the time) was held to apply to the dinnerware set.

While the only information that we have about the dinnerware set is the text of NY A86799, using the rate of duty applicable to the knife as the rate of duty for the dinnerware set is erroneous. While we cannot calculate the rate of duty in effect in 1996 for every item in the dinnerware set due to our lack of information (i.e., it is impossible to convert compound duty rates to equivalent *ad valorem* rates without knowing an article's value), certain articles in the set were subject to such high duty rates (e.g., the glassware in the set was subject to a 36.1% *ad valorem* rate of duty in 1996), that it is unlikely that the knife was the article in the set subject to the highest rate of duty.

HOLDING:

NY A86799, dated September 17, 1996, is hereby revoked.

Due to our current lack of information about the dinnerware set (specifically, the value of articles in the set), we are unable to provide a rate of duty for the dinnerware set (Homemakers Set) at this time. We invite you to request a new ruling on the dinnerware set pursuant to Section 177 of the Customs Regulations to obtain a ruling that sets forth the effective rate of duty on the merchandise.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF TWO MODIFIED STARCH PRODUCTS

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

ACTION: Notice of the proposed revocation of a tariff classification ruling letter and revocation of any treatment relating to the classifi-

cation of two modified starch products, hereinafter identified as “Cato® Size 52A” and “Cato® 15A”.

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 one ruling letter relating to the tariff classification of Cato® Size 52A and Cato® 15A under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before December 3, 2004.

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

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textiles Branch, (202) 572–8822.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that in order to maximize voluntary compliance with 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. section 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of Cato® Size 52A and Cato® 15A. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) G81194, dated November 3, 2000 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should 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 in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY G81194, CBP ruled that Cato® Size 52A and Cato® 15A are properly classified in subheading 3809.92.5000, HTSUSA, which provides for "Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included: Other: Of a kind used in the paper or like industries: Other". Since the issuance of this ruling, CBP has reviewed the classification of these items and has determined that the cited ruling is in error. Based on a review of laboratory findings for Cato® Size 52A and Cato® 15A, we are now of the opinion that these products have been manufactured to function as "modified starches". As such, heading 3505, HTSUSA, specifically provides for modified starch products which have been obtained by transformation through the action of ". . . heat, chemicals (*e.g.*, acids, alkalis) or diatase, and starch modified, *e.g.*, by oxidation, **esterification** or **etherification**." (emphasis

supplied) See EN 35.05. Heading 3809, HTSUSA, only provides for products “not elsewhere specified or included.” In addition, the World Customs Organization (WCO), Harmonized System Committee (HSC), at its 31st Session, decided to classify Cato® Size 52A and Cato® 15A in heading 35.05, HTS, which provides for, among other things, “Dextrins and other modified starches . . .”.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY G81194, dated November 3, 2000, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter 966632 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: October 19, 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 G81194
November 3, 2000
CLA-2-38:RR:NC:2:239 G81194
CATEGORY: Classification
TARIFF NO.: 3809.92.5000

MR. PAUL GIGUERE
SANDLER, TRAVIS & ROSENBERG, P.A.
1300 Pennsylvania Ave., NW
Washington, D.C. 20004-3002

RE: The tariff classification of Cato Size 52A and Cato 15A from Colombia.

DEAR MR. GIGUERE:

In your letter dated August 11, 2000, on behalf of your client Smurfit Carton De Colombia, S.A., you requested a tariff classification ruling for Cato Size 52A and Cato 15A which are formulated preparations based on chemically modified starch. Cato Size 52A contains an added hydrocarbon defoamer and Cato 15A contains an added phosphorous compound. Both products are sizing preparations specifically formulated for use in papermaking to improve the print, smoothness and gloss, and impart writing properties to the paper.

The applicable subheading will be 3809.92.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included: other. The rate of duty will be 6 percent ad valorem.

Articles classifiable under subheading 3809.92.5000, HTS, which are products of Colombia, are entitled to duty free treatment under the Andean Trade Preference Act (ATPA) upon compliance with all applicable regulations.

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 Thomas Brady at 212-637-7063.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966632
CLA-2 RR:CR:TE 966632 ASM
CATEGORY: Classification
TARIFF NO.: 3505.10.0040

MR. PAUL GIGUERE
SANDLER, TRAVIS & ROSENBERG, P.A.
1300 Pennsylvania Ave., NW
Washington, D.C. 20004-3002

RE: Revocation of NY G81194; The tariff classification of Cato® Size 52A and Cato® 15A; Modified starches

DEAR MR. GIGUERE:

This is in regard to Customs and Border Protection (CBP) New York Ruling Letter (NY) G81194, issued to you on November 3, 2000, on behalf of your client, Smurfit Carton De Colombia, S.A. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes NY G81194 by providing the correct classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) for two products identified as Cato® Size 52A and Cato® 15A.

FACTS:

Cato® Size 52A and Cato® 15A are chemically modified starches. Cato® Size 52A contains an added hydrocarbon defoamer and is used as a surface sizing agent in the papermaking industry. Cato® 15A contains an added phosphorous compound and silicon and is of a kind used in acid paper-

making processes. However, the added defoamer, phosphorous, and/or silicon compounds make-up less than 1 percent of each product.

In NY G81194, CBP classified Cato® Size 52A and Cato® 15A in subheading 3809.92.5000, HTSUSA, which provides for “Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included: Other: Of a kind used in the paper or like industries: Other”.

ISSUE:

What is the proper classification for the merchandise?

LAW AND ANALYSIS:

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

Both products, identified as Cato® Size 52A and Cato® 15A, are cationic corn starches, i.e., a starch which has been chemically modified so that the cationic charge ensures close binding with anion cellulose fibers. Cationic starches are made via etherification (or esterification) of their hydroxyl groups with quarternary ammonium groups combined with phosphating of starches. Although many of the cationic starches are used primarily in paper manufacturing, they can also be used as textile sizing, emulsification, stabilization (for colloid solutions, etc.) by their functional properties. In addition, they can be used as a finished sizing or in combination with other ingredients for the sizing.

Heading 3505, HTSUSA, provides for:

Dextrins and other modified starches (for example, pregelatinized or esterified starches); glues based on starches, or on dextrins or other modified starches.

The EN for heading 3505, states that the heading covers, “. . . modified starches, i.e., products obtained by the transformation of starches through the action of heat, chemicals (e.g., acids, alkalis) or diastase, and starch modified, e.g., by oxidation, esterification or etherification.” In addition, EN 35.05(4) specifically notes that the heading covers esterified starches which include starch acetates used principally in the paper industries. However, EN 35.05(d) states that the heading does not cover “Prepared glazings and dressings (based on starches or dextrins) of a kind used in the paper, textile, leather or like industries (**heading 38.09**).”

Heading 3809, HTSUSA, provides for:

Finishing agents, dye carriers to accelerate the dyeing or fixing of dyestuffs and other products and preparations (for example, dressings and

mordants), of a kind used in the textile, paper, leather or like industries, not elsewhere specified or included.

EN 38.09(B) describes products and preparations used in the paper industries as follows: “(2) **Sizing agents or sizing additives** used in paper processing to improve printability, smoothness and gloss and to impart writing properties to the paper. These preparations may be based on . . . starch . . .”. Exclusionary language set forth at EN 38.09(e) specifically notes that the heading does not cover “Dextrins and other modified starches, and glues based on starches or on dextrins or other modified starches (**heading 35.05**).

With respect to both Cato® Size 52A and Cato® 15A, the starch constituent predominates in both products because the defoamer or phosphorous/silicon compounds are added in very small amounts relative to the starch. As we have previously noted, these added compounds make-up less than 1 percent of each product. Furthermore, based on a review of laboratory findings for Cato® Size 52A and Cato® 15A, these products are cationic starches which have been chemically modified by etherification or esterification. Thus, we are now of the opinion that these products have been manufactured to function as “modified starches”. As such, Heading 3505, HTSUSA, specifically provides for modified starches. In addition, EN 35.05(4) notes that the heading covers esterified starches that are principally used in the paper industries. It is also important to note that heading 3809, HTSUSA, is a basket provision that generally provides for finishing agents, dye carriers and other products and preparations of a kind used in the paper industry which may be based on starch (among other things), and are “*not elsewhere specified or included*” (emphasis supplied). Since the Cato® Size 52A and Cato® 15A papermaking products are specifically described in heading 3505, HTSUSA, there is no occasion to consider classification in heading 3809, HTSUSA.

We note, the World Customs Organization (WCO), Harmonized System Committee (HSC), at its 31st Session, decided to classify Cato® Size 52A and Cato® 15A in heading 35.05, HTS, which provides for, among other things, “Dextrins and other modified starches . . .”. In making this decision, the HSC noted findings made by the WCO, Scientific Sub-Committee (SSC) that certain added ingredients to these products, i.e., defoamer, phosphorus, and silicon, did not change the character of the goods as modified starches, but were merely included as processing aids. See Opinion No. 3505.10/1 and 2, of the *WCO Compendium of Classification Opinions*.

As stated in T.D. 89–80, decisions in the *Compendium of Classification Opinions* should be treated in the same manner as the EN, i.e., while neither legally binding nor dispositive, they constitute the official interpretation of the Harmonized System in consideration of a particular issue placed before the HSC. TD 89–80 further states that EN’s and decisions in the *Compendium of Classification Opinions* “should receive considerable weight.”

In view of the foregoing, we are now of the opinion that the subject products, Cato® Size 52A and Cato® 15A, are properly classified in heading 3505, HTSUSA, which provides for “. . . other modified starches”.

HOLDING:

NY G81194, dated November 3, 2000, is hereby revoked.

The subject merchandise is correctly classified in subheading 3505.10.0040, HTSUSA, which provides for, "Dextrins and other modified starches (for example, pregelatinized or esterified starches); glues based on starches, or on dextrins or other modified starches: Dextrins and other modified starches, Other: Derived from corn (maize) starch." The general column one duty rate is 0.7 cents/kg.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

