

Bureau of Customs and Border Protection

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 10 2004)

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

SUMMARY: Presented herein are the copyrights, trademarks, and trade names recorded with U.S. Customs and Border Protection during the month of October 2004. The last notice was published in the CUSTOMS BULLETIN on October 13, 2004.

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

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

Dated: November 10, 2004

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

11/01/2004
13:17:55

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

REC NUMBER	EFF DT	EXP DT	NAME OF COP., TMK, TMM OR MSK	OWNER NAME	RES
COP0400120	20041004	20241004	ROYALTY FLORAL	DWI HOLDINGS, INC.	N
COP0400121	20041004	20241004	MONTERREY MANTLE DESIGN (1996)	DISTINCTIVE MANTLE DESIGNS, INC.	N
COP0400122	20041004	20241004	FINDING NEMO - SPRING 2003 STYLE GUIDE	DISNEY ENTERPRISES, INC. & PIXAR	N
COP0400123	20041004	20241004	TAMAGOTCHI PLUS ANIME IMAGES	KABUSHI KAISHA BANDAI	N
COP0400124	20041004	20241004	TAMAGOTCHI PLUS PIXEL IMAGES	KABUSHI KAISHA BANDAI	N
COP0400125	20041004	20241004	TAMAGOTCHI PLUS ICONS	KABUSHI KAISHA BANDAI	N
COP0400126	20041004	20241004	STYLE 1017	KREITMAN KNITWORKS LTD.	N
COP0400127	20041004	20241004	HE AIN'T HEAVY	WALT HORTON STUDIOS, INC.	N
COP0400128	20041004	20241004	SHE AIN'T HEAVY	WALT HORTON STUDIOS, INC.	N
COP0400129	20041004	20241004	OPTIC DESIGNS COLLECTION	CHARLES M. OPHEIM	N
COP0400130	20041004	20241004	DICE EPISODE 1 (ENGLISH)	BANDAI ENTERTAINMENT INC.	N
COP0400131	20041028	20241028	VINTAGE COSMETICS DESIGN 1994 SERIES 1 (4 DESIGNS)	VINTAGE GROUP INC.	N
SUBTOTAL RECORDATION TYPE 12					
TKH0400903	20041004	20061203	NULVTELY	BRAINTREE LABORATORIES, INC.	N
TKH0400904	20041004	20060318	GOLVTELY	BRAINTREE LABORATORIES, INC.	N
TKH0400905	20041004	20120604	HALVLELY	BRAINTREE LABORATORIES, INC.	N
TKH0400906	20041004	20131223	WAKNESPEEL	ARLYN FERRARI MARK COMPANY	N
TKH0400907	20041004	20051124	BRILLIANCE	BELEN TECHNOLOGIES, INC.	N
TKH0400908	20041004	20080129	BRILLIANCE VIDEOFLEX	BELEN TECHNOLOGIES, INC.	N
TKH0400909	20041004	20080915	DATAUFF	BELEN TECHNOLOGIES, INC.	N
TKH0400910	20041004	20100717	FLAMARREST	BELEN TECHNOLOGIES, INC.	N
TKH0400911	20041004	20130622	KINDERGUARD	SECURE CARE PRODUCTS, INC.	N
TKH0400912	20041004	20111106	PHAT HYDRO	TOMNSLEY, EVAN D.	N
TKH0400913	20041004	20111106	PANW-U	FRUDENBERG NONWOVENS LIMITED	N
TKH0400914	20041004	20140309	PANW-U	METALLICA	N
TKH0400915	20041004	20140201	PURE FIJI	PURE FIJI EXPORT LTD.	N
TKH0400916	20041004	20140217	CHARLES CHAPIN & DESIGN	BUBBLES INCORPORATED	FJ
TKH0400917	20041004	20130902	CHARLES CHAPLIN	BUBBLES INCORPORATED	N
TKH0400918	20041004	20110123	CLEARVU ENCORE	IMPACT PRODUCTS LLC	N
TKH0400919	20041004	20081027	TERATEXT	SCIENCE APPLICATIONS INT'L CORP.	N
TKH0400920	20041004	20140420	VON DUTCH	VON DUTCH ORIGINALS, LLC	N
TKH0400921	20041004	20100829	DESIGN ONLY	CASTRO CHEESE COMPANY, INC.	N
TKH0400922	20041004	20071223	HECHO AL ESTILO RANCHO	CASTRO CHEESE COMPANY, INC.	N
TKH0400923	20041004	20130128	"LA VAQUITA" & DESIGN	CASTRO CHEESE COMPANY, INC.	N
TKH0400924	20041004	20060507	LA VAQUITA	CASTRO CHEESE COMPANY, INC.	N
TKH0400925	20041004	20060507	DREAMWORKS & DESIGN	CASTRO CHEESE COMPANY, INC.	N
TKH0400926	20041004	20120723	SHREK	DREAMWORKS L.L.C.	N
TKH0400927	20041004	20120326	KALPH LAUREN BLUE	PRL USA HOLDINGS, INC.	N
TKH0400928	20041004	20140225	XTREME	THE GATES CORPORATION	N
TKH0400929	20041005	20071125	NARCISO RODRIGUEZ	NARCISO RODRIGUEZ	N
TKH0400930	20041005	20140210	MARTISG RODRIGUEZ	MONTBANA CORPORATION	N
TKH0400931	20041005	20140406	OLD WEST	JAMI CORPORATION PVT. LTD.	N
TKH0400932	20041005	20131021	MINK	APOLLO TEXTILE S.A. DE C.V.	N
TKH0400933	20041005	20140604	ZIK-ZOK	EXOTIC PARADISE CORPORATION	N
TKH0400934	20041005	20111218	NEW YORK FAHGETTABOUDI	SCHLAGE LOCK COMPANY	N
TKH0400935	20041005	20140803			N

BUREAU OF CUSTOMS AND BORDER PROTECTION

REC NUMBER	EFF DT	EXP DT	NAME OF COP., TMK, TNM OR MSK	OWNER NAME	RES
THK0400937	20041005	20140601	NEUROGENA	NEUROGENA CORPORATION	N
THK0400938	20041005	20130729	ATRYN	ATII, LLC	N
THK0400939	20041005	20131228	BABY MINK	ZENITH TEXTIL S.A. DE C.V.	N
THK0400940	20041005	20080301	ZENITH	APOLLO ELECTRONIC CORPORATION	N
THK0400941	20041005	20140817	MEDITATION	HOUSE OF MOHAN CORPORATION	N
THK0400942	20041005	20141108	PHOENIX SUNS AND DESIGN	PHOENIX SUNS LIMITED PARTNERSHIP	N
THK0400943	20041005	20130810	DR. ZAG'S	MOUNTAIN ABRASIVE PRODUCTS CORP.	N
THK0400944	20041005	20140420	ALAVERT	WYETH	N
THK0400945	20041005	20130923	BROOKSIDE FLIES	BROOKSIDE FLIES	N
THK0400946	20041005	20070520	32	SENZERGUES, PIERRE ANDRE	N
THK0400947	20041006	20090817	THIRTYTWO	PIERRE ANDRE SENZERGUES	N
THK0400948	20041006	20100801	THIRTYTWO	PIERRE ANDRE SENZERGUES	N
THK0400949	20041006	20090216	DESIGN ONLY (CHEVRON)	PIERRE ANDRE SENZERGUES	N
THK0400950	20041006	20091026	EMERICA	PIERRE ANDRE SENZERGUES	N
THK0400951	20041006	20100801	EMERICA, & DESIGN	PIERRE ANDRE SENZERGUES	N
THK0400952	20041006	20090223	ETNIES & DESIGN (ARROW LOGO)	PIERRE ANDRE SENZERGUES	N
THK0400953	20041006	20071014	DESIGN ONLY	PIERRE ANDRE SENZERGUES	N
THK0400954	20041006	20110914	ETNIES	PIERRE ANDRE SENZERGUES	N
THK0400955	20041006	20100801	ETNIES & DESIGN (ARROW LOGO)	PIERRE ANDRE SENZERGUES	N
THK0400956	20041006	20100801	ES	PIERRE ANDRE SENZERGUES	N
THK0400957	20041006	20100623	ES (STYLIZED)	PIERRE ANDRE SENZERGUES	N
THK0400958	20041006	20061112	ES (STYLIZED)	PIERRE ANDRE SENZERGUES	N
THK0400959	20041006	20091112	32	PIERRE ANDRE SENZERGUES	N
THK0400960	20041006	20090601	32	PIERRE ANDRE SENZERGUES	N
THK0400961	20041013	20140914	DESIGN ONLY	AUTO METER PRODUCTS, INC.	N
THK0400962	20041018	20140705	HP & DESIGN	HEWLETT-PACKARD COMPANY	N
THK0400963	20041026	20130918	KEEN OVENS	HENKEL INC.	N
THK0400964	20041026	20140720	MARY-KATEANDASHLEY	DUALSTAR ENTERTAINMENT GROUP.	N
THK0400965	20041026	20140608	RS 200	SCHNEE-MOREHEAD BUSINESS TRUST	N
THK0400966	20041026	20140712	DESIGN OF CHINESE CHARACTERS	LIN HEUNG BAKERY & RESTAURANT	N
THK0400967	20041026	20131230	SAFE AT HOME PRODUCTS, INC.	COPPERFIELD CHIMNEY SUPPLY INC.	N
THK0400968	20041026	20121222	HOMESAVER	COPPERFIELD CHIMNEY SUPPLY INC.	N
THK0400969	20041026	20100213	COPPERFIELD	COPPERFIELD CHIMNEY SUPPLY INC.	N
THK0400970	20041026	20130923	SHAPE, STYLE AND OVERALL APPEARANCE OF MAG INSTRUMENT'S	MAG INSTRUMENT INC.	N
THK0400971	20041026	20130805	DESIGN, MAG INSTRUMENT'S C CELL MAG-LITE	MAG INSTRUMENT INC.	N
THK0400972	20041026	20130923	APPEARANCE OF MAG CHARGER FLASHLIGHT	MAG INSTRUMENT INC.	N
THK0400973	20041026	20140106	LCR AND TUMBLING DICE DESIGN	GEORGE & COMPANY LLC	N
THK0400974	20041028	20090526	FRISBEE	WHAM-O, INC.	N
THK0400975	20041028	20131202	LIZSPORT	L.C. LICENSING, INC.	N
THK0400976	20041028	20140817	LUCKY NIGHTS	LUCKY BRAND DUNGAREES, INC.	N
THK0400977	20041028	20130916	LIZ & CO.	L.C. LICENSING, INC.	N
THK0400978	20041028	20120108	CRAZY HORSE	L.C. LICENSING, INC.	N
THK0400979	20041028	20130916	CLAIBORNE COMPONENTS	L.C. LICENSING, INC.	N

SUBTOTAL RECORDATION TYPE 77

TOTAL RECORDATIONS ADDED THIS MONTH 89

**Annual User Fee for Customs Broker Permit and National Permit:
General Notice**

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

ACTION: Notice of due date for Customs broker user fee

SUMMARY: This is to advise Customs brokers that the annual fee of \$125 that is assessed for each permit held by a broker whether it may be an individual, partnership, association or corporation, is due by January 21, 2005. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for payment of fee: January 21, 2005.

FOR FURTHER INFORMATION CONTACT: Bruce Raine, Broker Management Branch, (202)344-2580.

SUPPLEMENTARY INFORMATION: Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub.L. 99-272) established that an annual user fee of \$125 is to be assessed for each Customs broker permit and National permit held by an individual, partnership, association or corporation. This fee is set forth in the Customs Regulations in section 111.96 (19 CFR 111.96).

Customs Regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which will be published in the Federal Register annually. Broker districts are defined in the General Notice published in the Federal Register, Volume 60, No, 187, September 27, 1995.

Section 1893 of the Tax reform Act of 1986 (Pub.L. 99-514) provides that notices of the date on which the payment is due for each broker permit shall be published by the Secretary of the Treasury in the Federal Register by no later than 60 days before such due date.

This document notifies brokers that for 2005, the due date of the user fee is January 21, 2005. It is expected that the annual user fees for brokers for subsequent years will be due on or about the twentieth of January of each year.

DATED: November 9, 2004

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

[Published in the Federal Register, November 19, 2004 (69 FR 67749)]

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

Washington, DC, November 17, 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.

MICHAEL T. SCHMITZ,
*Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED REVOCATION OF A RULING LETTER
AND REVOCATION OF TREATMENT RELATING
TO TARIFF CLASSIFICATION OF A CERTAIN MEN'S
UPPER BODY GARMENTS

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke one ruling letter relating to the tariff classification of certain men's upper body garments under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP also 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 31, 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 reviewed 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: Kelly Herman, Textiles Branch at (202) 572-8713 or Cynthia Reese, Textiles Branch at (202) 572-8812.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of certain men's upper body garments. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) K84208, dated March 18, 2004, (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical 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 K84208, dated March 18, 2004, CBP ruled that a men's upper body garment was classified in heading 6205, HTSUSA, as a men's man-made fiber shirt. Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. We have determined that the article is properly classified in heading 6201, HTSUSA, as a garment similar to a windbreaker.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY K84208 and to revoke or modify any other ruling not specifically identified, to reflect the proper classification of certain men's upper body garments according to the analysis contained in proposed HQ 967188, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

DATED: November 12, 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 K84208
March 18, 2004
CLA-2-62:RR:NC:WA:355 K84208
CATEGORY: Classification
TARIFF NO.: 6205.30.2070

MR. DANIEL J. NOLAN
KUEHNE & NAGEL, INC.
1261 Aviation Blvd., Suite 190
Hebron, KY 41048

RE: The tariff classification of a man's shirt from Sri Lanka

DEAR MR. NOLAN:

In your letter dated March 9, 2004, you requested a classification ruling on behalf of Holloway Sportswear, Inc.

You submitted a sample of a men's upper body garment which you identified as a short sleeved pullover jacket, style 9058. The pull over garment, made of 100% woven nylon fabric, features short sleeves; a short stand up collar; a partial front opening beginning at the neck and extending down for approximately five inches and which is secured shut with a zipper; a tunneled hemmed bottom with an elasticized drawcord threaded through it; and a six inch long side vent with a zipper for closure.

The applicable subheading for style 9058 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: Men's. The duty rate will be 29.1¢/kg. plus 25.9% ad valorem.

Style 9058 falls within textile category designation 640. Based upon international textile trade agreements products of Sri Lanka 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 967188
CLA-2 RR:CR:TE 967188 KSH
TARIFF NO.: 6201.93.3511

MARK R. SANDSTROM, ESQ.
1400 16th Street N.W. Suite 400
Washington, D.C. 20036

RE: Revocation of New York Ruling Letter (NY) K84208, dated March 18, 2004; Classification of certain men's upper body garments.

DEAR MR. SANDSTROM:

This is in response to your letter of July 19, 2004, on behalf of your client, Holloway Sportswear, Inc., in which you request reconsideration of New York Ruling Letter (NY) K84208, issued to your client on March 18, 2004, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain men's upper body garments. The men's upper body garments were classified in subheading 6205.30.2070, HTSUS, which provides for "Men's or boys' shirts: Of man-made fibers: Other: Other: Other: Other: Men's." You assert that based on the appearance and characteristics of the men's upper body garments, they are classified in subheading 6201.93.3000, HTSUS, which provides for "Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6203: Anoraks (including ski jackets), windbreakers and similar articles (including padded, sleeveless jackets): Of man-made fibers: Other: Other: Other: Water resistant." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

FACTS:

The submitted sample is a men's upper body garment which you have identified as a short sleeve pullover jacket, style 9058. It is made of 100% woven nylon fabric, features short sleeves, a short stand up collar, a partial front opening beginning at the neck and extending down for approximately five inches which is secured shut with a zipper, a tunneled hemmed bottom with an elasticized drawcord threaded through it, and a six inch long side vent with a zipper closure on the left side.

ISSUE:

Whether the Style 9058 is classifiable as men's shirts in heading 6205, HTSUS, or as men's windbreakers under heading 6201, HTSUS.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN),

constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

In K84208, it was determined that the upper body garment was not classifiable as an outerwear jacket under heading 6201, HTSUS, because the garment does not possess sufficient jacket features. In making the distinction between a shirt classifiable under heading 6205, HTSUS, and a jacket under heading 6201, HTSUS, CBP applies The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories, CIE 13/88, ("Guidelines"). These Guidelines set forth eleven criteria typically found on outerwear coats/jackets and further note that "Garments not possessing at least three of the listed features will be considered on an individual basis."

In circumstances such as these, where the identity of a garment is ambiguous for classification purposes, reference to the Guidelines is appropriate. The Guidelines were developed and revised in accordance with the HTSUS to ensure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles. The Guidelines offer the following with regard to the classification of men's or boy's shirt-jackets:

Three-quarter length or longer garments commonly known as coats, and other garments such as . . . waist length jackets fall within this category . . . A coat is an outerwear garment which covers either the upper part of the body or both the upper and lower parts of the body. It is normally worn over another garment, the presence of which is sufficient for the wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both. . . .

* * *

C) Shirt-jackets have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist. . . . The following criteria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:

- (1) Fabric weight equal to or exceeding 10 ounces per square yard. . . .
- (2) A full or partial lining.
- (3) Pockets at or below the waist.
- (4) Back vents or pleats. Also side vents in combination with back seams.
- (5) Eisenhower styling.
- (6) A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.
- (7) Large jacket/coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
- (8) Lapels.
- (9) Long sleeves without cuffs.

- (10) Elasticized or rib-knit cuffs.
- (11) Drawstring, elastic or rib-knit waistband.

* * *

Garments having features of both jackets and shirts will be categorized as coats if they possess at least three of the above listed features and if the result is not unreasonable . . . Garments not possessing at least three of the listed features will be considered on an individual basis.

See Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories, CIE 13/88 at 5–6 (Nov. 23, 1988) and the CBP Informed Compliance Publication (ICP) What Every Member of the Community Should Know About: Apparel Terminology Under the HTSUS, (Jan., 2004).

CBP recognizes that the garment at issue is a hybrid garment, possessing features of both shirts and jackets. A physical examination of the garment at issue reveals that it possesses one of the Guidelines jacket criteria: the garment has a drawstring waistband. The garment therefore must be considered on an individual basis.

The ENs for heading 6205 state in pertinent part:

The heading **does not cover** garments having the character of windcheaters, wind jackets, etc. of **heading 62.01**, which generally have a tightening at the bottom, or of jackets of **heading 62.03**, which generally have pockets below the waist. Sleeveless garments are also **excluded**.

The subject merchandise has tightening at the bottom and is constructed of woven nylon fabric typically used in windbreakers. These features and the oversized cut cause the garment to have the character of a wind-jacket. The subject merchandise is therefore precluded from classification as a shirt of heading 6205, HTSUS, pursuant to the EN.

The next issue is whether the garment at issue is classifiable as a windbreaker or similar article of heading 6201, HTSUS. The Explanatory Notes (EN) to heading 6101, which apply *mutatis mutandis* to the articles of heading 6201, HTSUS, state: “This heading covers . . . garments for men or boys, characterised by the fact that that they are generally worn over all other clothing for protection against the weather.” The upper body garment is constructed from woven nylon which is typically used in windbreakers. The fabric used in the construction of the subject merchandise will provide a degree of protection against the weather due to the overall styling including a zipper that allows the stand-up collar to be zipped closed and woven nylon fabric. Although the subject garment possesses short sleeves, the merchandise is similar to garments which have been classified as wind breakers or wind cheaters and which are typically worn by golfers. The shorter sleeves of this particular garment may be preferable to some golfers who want more flexibility in their swing and do not want to be hampered by long sleeves. The subject garment is much like the jackets worn by golfers or other athletes for warmth or for protection from light rain. Indeed the hang tag attached to the sample indicates that it is both wind and water resistant.

The hang tag also markets the upper body garment as a jacket and indicates that it has generous sizing. A review of various internet retailer sites

indicates that the subject garment is marketed and sold as a pullover jacket. A catalog description of the subject garment advertises it as a warmup garment with coordinating pants.

The side vent further allows the upper body garment to be worn over other upper body garments. Accordingly, the merchandise is classifiable as an article similar to a men's windbreaker under heading 6201, HTSUS.

You claim that the subject merchandise is water resistant but have not submitted any information which validates such claim. The Additional U.S. Note to Chapter 62 addresses the term "water resistant" and states in pertinent part:

For the purposes of [subheading 6201.93.30], the term "water resistant" means that garments classifiable in those subheadings must have a water resistance (see ASTM designations D 3600-81 and D 3781-79) such that, under a head pressure of 600 millimeters, not more than 1.0 gram of water penetrates after two minutes when tested in accordance with AATCC Test Method 35-1985. This water resistance must be the result of a rubber or plastics application to the outer shell, lining, or inner lining.

The port of entry may perform such test for water resistant determinations and if the subject merchandise meets the aforementioned standards of U.S. Additional Note, Chapter 62, HTSUSA, the subject merchandise will be classified in subheading 6201.93.30, HTSUS.

HOLDING:

NY K84208, dated March 18, 2004, is hereby revoked.

If the men's upper body garment, style 9058, passes the water resistance test specified in Chapter 62, U.S. Note 2, HTSUS, then the applicable HTS subheading for the garment will be 6201.93.3000, HTSUS, which provides for "Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers, and similar articles (including padded, sleeveless jackets), other than those of heading 6203: Anoraks (including ski jackets), windbreakers and similar articles (including padded, sleeveless jackets): Of man-made fibers: Other: Other: Other: Water resistant." The duty rate will be 7.1 percent *ad valorem*.

If the men's upper body garment, style 9058, does not pass the water resistance test specified in Chapter 62, U.S. Note 2, HTSUS, then the applicable HTS subheading for the garment will be 6201.93.3511, HTSUS, which provides for "Men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers, and similar articles (including padded, sleeveless jackets), other than those of heading 6203: Anoraks (including ski jackets), windbreakers and similar articles (including padded, sleeveless jackets): Of man-made fibers: Other: Other: Other: Other: Men's." The applicable rate of duty is 27.7 percent *ad valorem*. The textile quota category is 634.

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, available on the CBP website at www.cbp.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, 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 AND MODIFICATION OF
RULING LETTERS AND REVOCATION OF TREATMENT
RELATING TO TARIFF CLASSIFICATION OF CERTAIN
EXTRUDED POLYETHYLENE OR POLYPROPYLENE MESH**

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

ACTION: Notice of proposed revocation and modification of tariff classification ruling letters and revocation of treatment relating to the classification of certain extruded polyethylene or polypropylene mesh.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke three ruling letters and modify one ruling letter, each relating to the tariff classification of extruded polyethylene or polypropylene mesh under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP also 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 31, 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 reviewed 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: Kelly Herman, Textiles Branch at (202) 572-8713 or Cynthia Reese, Textiles Branch at (202) 572-8812.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke three ruling letters and modify one ruling letter, each pertaining to the tariff classification of extruded polyethylene or polypropylene mesh. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letters (NY) C84049, dated February 13, 1998 (Attachment A), NY G87431, dated March 20, 2001 (Attachment B), NY D80028, dated July 28, 1998 (Attachment C) and to the modification of NY H88635, dated February 21, 2002 (Attachment D), this notice covers any rulings on this merchandise which may exist but have not been specifically 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, Customs intends to revoke any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise or the importer's or CBP's previous interpretation of the 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 C84049, CBP ruled that extruded polyethylene mesh was classified in subheading 3920.10.0000, HTSUSA, which provides for "other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials: of polymers of ethylene." In NY G87431, CBP ruled that extruded polyethylene plastic was also classified in subheading 3920.10.0000, HTSUSA. Since the issuance of those rulings, CBP has reviewed the classification of these items and has determined that the cited rulings are in error. We have determined that the articles are properly classified in subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other, Other."

In NY H88635, CBP classified 100% polyethylene open-work warp knit fabric and extruded polyethylene mesh. CBP ruled that the extruded polyethylene mesh was classified in subheading 3920.10.0000, HTSUSA. With respect to the extruded polyethylene mesh, CBP has determined that it is properly classified in subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other, Other."

In NY D80028, CBP ruled that extruded polypropylene mesh was classified in subheading 3920.20.0000, HTSUSA, which provides for "other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials: of polymers of polypropylene." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. We have determined that the article is properly classified in subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other, Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY C84049, NY G87431, NY D80029 and modify NY H88635 and to revoke or modify any other ruling not specifically identified, to reflect the proper classification of extruded polyethylene or polypropylene mesh according to the analysis contained in proposed Headquarters Ruling Letters (HQ) 967346, HQ 967347, HQ 967348 and HQ 967349 as set forth as Attachments E through H, respectively, 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 merchandise. Before taking this action, consideration will be given to any written comments timely received.

DATED: November 12, 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 C84049
February 13, 1998
CLA-2-39:RR:NC:SP:221 C84049
CATEGORY: Classification
TARIFF NO.: 3920.10.0000

MS. LORI ALDINGER
RITE AID CORPORATION
P.O. Box 3165
Harrisburg, PA 17105

RE: The tariff classification of extruded polyethylene mesh from China.

DEAR MS. ALDINGER:

In your letter dated January 27, 1998, you requested a tariff classification ruling.

The product consists of a sheet of extruded polyethylene mesh measuring 60 inches by 40 inches. The mesh is made in a continuous extrusion process and not from pre-existing filaments. The mesh is intended to be used to package an Easter Basket.

You have asked whether the above-described items are classifiable in Chapter 95 as festive articles based upon the impact of a recently decided court case initiated by Midwest of Cannon Falls (No. 96-1271, -1279 dated Aug. 14, 1997). The outcome of this case, however, is not applicable to the subject articles. Explanatory Note (B)(c) to heading 95.05, reads: This heading also excludes: Packagings of plastics or of paper, used during festivals (classified according to constituent material, for example, Chapter 39 or 48). The instant product falls within this exclusion.

The applicable subheading for the extruded polyethylene mesh will be 3920.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials: of polymers of ethylene. The rate of duty will be 4.2 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 im-

ported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at 212-466-5580.

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

[ATTACHMENT B]

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

NY G87431
March 20, 2001
CLA-2-39:RR:NC:SP:221 G87431
CATEGORY: Classification
TARIFF NO.: 3920.10.0000

MR. STEPHEN L. FODOR
KUEHNE & NAGEL, INC.
235 Southfield Parkway
Forest Park, GA 30297

RE: The tariff classification of garden netting from Spain.

DEAR MR. FODOR:

In your letter dated February 14, 2001, on behalf of Interamas Nets S.A. you requested a tariff classification ruling.

A sample was provided with your letter. The garden netting is sheeting composed of extruded polyethylene plastic.

The applicable subheading for the garden netting will be 3920.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials: of polymers of ethylene. The rate of duty will be 4.2 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at 212-637-7034.

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

[ATTACHMENT C]

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

NY D80028
July 28, 1998
CLA-2-39:RR:NC:SP:221 D80028
CATEGORY: Classification
TARIFF NO.: 3920.20.0000; 9817.00.5000

MR. CHRIS MURRAY
AMERICAN CARGO EXPRESS, INC.
NEWARK INTERNATIONAL AIRPORT/SEAPORT
435 Division Street
Elizabeth, NJ 07201

RE: The tariff classification of polypropylene mesh from China.

DEAR MR. MURRAY:

In your letter dated July 14, 1998, on behalf of Power Aisle, Inc., you requested a tariff classification ruling.

A sample was provided. The product consists of extruded polypropylene mesh made in a continuous extrusion process and not from pre-existing filaments.

This mesh can be placed over trees and plants to protect vegetables and fruits from birds. According to the brochure, the mesh will be sold in a package and measure 7 feet by 20 feet.

The applicable subheading for the polypropylene mesh will be 3920.20.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other plates, sheets, film, foil and strip, of plastics, non-cellular and not reinforced, laminated, supported or similarly combined with other materials: of polymers of polypropylene. The rate of duty will be 4.2 percent ad valorem.

Machinery, equipment and implements to be used for agricultural or horticultural purposes are provided for under the special classification provision of subheading 9817.00.5000, HTS.

Upon compliance with the actual use requirements of Section 10.131-139 of the Customs Regulations, the polypropylene mesh would be classifiable in subheading 9817.00.5000, HTS, and would be free of duty.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Joan Mazzola at 212-466-5580.

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

[ATTACHMENT D]

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

NY H88635
February 21, 2002
CLA-2-60:RR:NC:TA:352 H88635
CATEGORY: Classification
TARIFF NO.: 3920.10.0000; 6005.31.0010

MR. JOHN MATTSON
NORTH STAR WORLD TRADE SERVICES, INC.
980 Lone Oak Road, Suite 160
Eagan, MN 55121

RE: The tariff classification of a 100% polyethylene open-work warp knit fabric and a polyethylene extruded mesh from China.

DEAR MR. MATTSON:

In your letter dated February 11, 2002, on behalf of your client Treesentials Company, you requested a tariff classification ruling.

Two samples accompanied your request for a ruling. The first, designated as "Black Extruded Netting", is a extruded polyethylene mesh. This product measures 14 feet in width and will be imported in 1000 foot lengths. It will weigh 2 to 5 pounds per 1000 square feet. Your correspondence indicates that this item will be used in the agricultural industry to protect grape crops from damage by birds.

The second product, designated by you as "White Knit Netting", is an open-work warp knit fabric composed of 100% polyethylene monofilaments. The monofilaments from which this product is knit meet the dimensional requirements to be considered textile monofilaments and consequently the fabric knit from these products are considered textile knit fabrics. This knit fabric will be imported in rolls of 1000 feet and measure approximately 427 centimeters in width. Your correspondence indicates that this item will also be used in the agricultural industry to protect grape crops from damage by birds.

The applicable subheading for the black extruded polyethylene mesh will be 3920.10.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other plates, sheets, film, foil or strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials, of polymers of ethylene. The rate of duty will be 4.2 percent ad valorem.

The applicable subheading for the white polyethylene open-work knit fabric will be 6005.31.0010, Harmonized Tariff Schedule of the United States (HTS), which provides for warp knit fabrics (including those made on galloon knitting machines), other than those of headings 6001 to 6004, of synthetic fibers, unbleached or bleached, open-work fabrics. The rate of duty will be 10.8 percent ad valorem.

Machinery, equipment and implements to be used for agricultural or horticultural purposes are provided for under the special classification provision of subheading 9817.00.5000, HTS. Upon compliance with the actual use requirements of Section 10.131-139 of the Customs Regulations, the black

extruded polyethylene mesh would be classifiable in subheading 9817.00.5000, HTS, and would be free of duty.

U.S. Note 2 to Subchapter XVII of Chapter 98 states in part that Subheading 9817.00.50 and 9817.00.60 do not apply to articles of textile material. Since the white warp knit open-work fabric is considered a knit textile material, it is excluded from classification as machinery, equipment and implements to be used for agricultural or horticultural purposes in heading 9817.00.5000, HTS

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alan Tytelman at 646-733-3045.

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



[ATTACHMENT E]

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

HQ 967346
CLA-2 RR:CR:TE 967346 KSH
TARIFF NO.: 3926.90.9880

MS. LORI ALDINGER
RITE AID CORPORATION
P.O. Box 3165
Harrisburg, PA 17105

RE: Revocation of New York Ruling Letter (NY) C84049, dated February 13, 1998; Classification of extruded polyethylene mesh.

DEAR MS. ALDINGER:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) C84049, issued to you on February 13, 1998, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of extruded polyethylene mesh. The article was classified in subheading 3920.10.0000, HTSUSA, which provides for "other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials: of polymers of ethylene." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY C84049.

FACTS:

The product consists of a sheet of extruded polyethylene mesh measuring 60 inches by 40 inches. The mesh is made in a continuous extrusion process

and not from pre-existing filaments. The mesh is to be used to package an Easter basket.

ISSUE:

Whether the extruded polyethylene mesh is classified in heading 3926, HTSUSA, or heading 3920, 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.

Heading 3920, HTSUSA, provides for “Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials.”

Note 10 to Chapter 39, HTSUS, provides:

In headings 3920 and 3921, the expression “plates, sheets, film, foil and strip” applies only to plates, sheets, film, foil and strip (other than those of chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

The term “sheets” is not defined in the text of the HTSUSA or the Explanatory Notes. When terms are not so defined, they are construed in accordance with their common and commercial meaning. Nippon Kogaku (USA), Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982).

Webster’s Third New International Dictionary (Webster’s) (1986) defines “sheeting,” in relevant part, as “1: material in the form of sheets or suitable for forming into sheets: as . . . b: material (as a plastic) in the form of a continuous film. . . .” Id. at 2092. Webster’s defines “sheet,” in relevant part, as “3 a: a broad stretch or surface of something that is usu. thin in comparison to its length and breadth. . . .” Id. at 2091. The Oxford English Dictionary (2d Ed. 1989) defines “sheet” as “9. a. A relatively thin piece of considerable breadth of a malleable, ductile, or pliable substance.” Id. at 224.

The Court of International Trade has also examined the term sheet in various cases. In 3G Mermet Fabric Corp. v. United States, 135 F. Supp. 2d 151 (2001), the Court defined “sheet” as a “material in the form of a continuous stem covering or coating.”

In Sarne Handbags Corp. v. United States, 100 F. Supp. 2d 1126 (2000), the Court defined the term “sheeting” as follows:

[T]he common meaning of “sheeting” is material in the form of or suitable for forming into a broad surface of something that is unusually

thin, or is a material in the form of a continuous thin covering or coating.

In HQ 965889, dated March 17, 2003, geotextile material manufactured from woven mesh visibly coated on both sides with plastics was classified in heading 3926, HTSUSA. In so doing, we determined that the open spaces of the geotextile material were large enough that the material could not be considered to have a "broad surface." The unusually wide spacing in the weave interrupts any sort of surface continuity that could be formed, with each warp and weft yarn essentially standing alone, except where they intersect. The weave was not tight enough, and the yarns were not close enough, for them to form a continuous surface.

Similarly, the World Customs Organization's (WCO) Harmonized System Committee (HSC) classified substantially similar merchandise in subheading 3926.90, HTSUSA. See Annex L/5 to Doc. NC0590B2 (HSC/29/May 2002). The HSC did not consider the geotextile material, with its large open weave, to be a "sheet." See Annex G/11 to Doc. NC0510E2 (HSC/28/Nov. 2001).

The instant extruded polyethylene mesh, like the geotextile material of HQ 965889 and that classified by the HSC, has open spaces and cannot be considered to have a broad surface. Thus, the mesh lacks the continuity necessary to be classified as a sheet of plastics of heading 3920, HTSUSA. Accordingly, the extruded polyethylene mesh is classified in subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other, Other."

HOLDING:

NY C84049, dated February 13, 1998, is hereby revoked.

The extruded polyethylene mesh is classified in subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other, Other." The general column one rate of duty is 5.3% *ad valorem*.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

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

HQ 967347
CLA-2 RR:CR:TE 967347 KSH
TARIFF NO.: 3926.90.9880

MR. STEPHEN L. FODOR
KUEHNE & NAGEL, INC.
235 Southfield Parkway
Forest Park, GA 30297

RE: Revocation of New York Ruling Letter (NY) G87431, dated March 20, 2001; Classification of extruded polyethylene plastic.

DEAR MR. FODOR:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) G87431, issued to you on behalf of your client Interamas Nets S.A., on March 20, 2001, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of extruded polyethylene plastic. The article was classified in subheading 3920.10.0000, HTSUSA, which provides for "other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials: of polymers of ethylene." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY G87431.

FACTS:

The article identified as garden netting is sheeting composed of extruded polyethylene plastic.

ISSUE:

Whether the extruded polyethylene plastic is classified in heading 3926, HTSUSA, or heading 3920, 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.

Heading 3920, HTSUSA, provides for "Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials."

Note 10 to Chapter 39, HTSUS, provides:

In headings 3920 and 3921, the expression "plates, sheets, film, foil and strip" applies only to plates, sheets, film, foil and strip (other than those

of chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

The term “sheets” is not defined in the text of the HTSUSA or the Explanatory Notes. When terms are not so defined, they are construed in accordance with their common and commercial meaning. Nippon Kogasku (USA), Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982).

Webster’s Third New International Dictionary (Webster’s) (1986) defines “sheeting,” in relevant part, as “1: material in the form of sheets or suitable for forming into sheets: as . . . b: material (as a plastic) in the form of a continuous film. . . .” Id. at 2092. Webster’s defines “sheet,” in relevant part, as “3 a: a broad stretch or surface of something that is usu. thin in comparison to its length and breadth. . . .” Id. at 2091. The Oxford English Dictionary (2d Ed. 1989) defines “sheet” as “9. a. A relatively thin piece of considerable breadth of a malleable, ductile, or pliable substance.” Id. at 224.

The Court of International Trade has also examined the term sheet in various cases. In 3G Mermet Fabric Corp. v. United States, 135 F. Supp. 2d 151 (2001), the Court defined “sheet” as a “material in the form of a continuous stem covering or coating.”

In Sarne Handbags Corp. v. United States, 100 F. Supp. 2d 1126 (2000), the Court defined the term “sheeting” as follows:

[T]he common meaning of “sheeting” is material in the form of or suitable for forming into a broad surface of something that is unusually thin, or is a material in the form of a continuous thin covering or coating.

In HQ 965889, dated March 17, 2003, geotextile material manufactured from woven mesh visibly coated on both sides with plastics was classified in heading 3926, HTSUSA. In so doing, we determined that the open spaces of the geotextile material were large enough that the material could not be considered to have a “broad surface.” The unusually wide spacing in the weave interrupts any sort of surface continuity that could be formed, with each warp and weft yarn essentially standing alone, except where they intersect. The weave was not tight enough, and the yarns were not close enough, for them to form a continuous surface.

Similarly, the World Customs Organization’s (WCO) Harmonized System Committee (HSC) classified substantially similar merchandise in subheading 3926.90, HTSUSA. See Annex L/5 to Doc. NC0590B2 (HSC/29/May 2002). The HSC did not consider the geotextile material, with its large open weave, to be a “sheet.” See Annex G/11 to Doc. NC0510E2 (HSC/28/Nov. 2001).

The instant extruded polyethylene plastic, like the geotextile material of HQ 965889 and that classified by the HSC, has open spaces and cannot be considered to have a broad surface. Thus, the mesh lacks the continuity necessary to be classified as a sheet of plastics of heading 3920, HTSUSA. Accordingly, the extruded polyethylene plastic is classified in subheading 3926.90.9880, HTSUSA, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other.”

HOLDING:

NY G87431, dated March 20, 2001, is hereby revoked.

The extruded polyethylene plastic is classified in subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other: Other." The general column one rate of duty is 5.3% *ad valorem*.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967348
CLA-2 RR:CR:TE 967348 KSH
TARIFF NO.: 3926.90.9880

MR. JOHN MATTSON
NORTH STAR WORLD TRADE SERVICES, INC.
980 Lone Oak Road, Suite 160
Eagan, MN 55121

RE: Modification of New York Ruling Letter (NY) H88635, dated February 21, 2002; Classification of extruded polyethylene mesh.

DEAR MR. MATTSON:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) H88635, issued to you on behalf of your client Treessentials Company, on February 21, 2002, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of extruded polyethylene mesh¹. The article was classified in subheading 3920.10.0000, HTSUSA, which provides for "other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials: of polymers of ethylene." We have reviewed that ruling and found it to be in error as it pertains to the classification of the extruded polyethylene mesh. Therefore, this ruling modifies NY H88635 as it pertains to the extruded polyethylene mesh.

¹We note you also requested classification of a second article identified as 100% polyethylene open-work warp knit fabric, however this modification pertains only to the extruded polyethylene mesh.

FACTS:

The article, identified by you as “Black Extruded Netting”, is an extruded polyethylene mesh. This article measures 14 feet in width and will be imported in 1000 foot lengths. It will weigh 2 to 5 pounds per 1000 square feet. It will be used in the agricultural industry to protect grape crops from damage by birds.

ISSUE:

Whether the extruded polyethylene mesh is classified in heading 3926, HTSUSA, or heading 3920, 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.

Heading 3920, HTSUSA, provides for “Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials.”

Note 10 to Chapter 39, HTSUS, provides:

In headings 3920 and 3921, the expression “plates, sheets, film, foil and strip” applies only to plates, sheets, film, foil and strip (other than those of chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

The term “sheets” is not defined in the text of the HTSUSA or the Explanatory Notes. When terms are not so defined, they are construed in accordance with their common and commercial meaning. Nippon Kogasku (USA), Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982).

Webster’s Third New International Dictionary (Webster’s) (1986) defines “sheeting,” in relevant part, as “1: material in the form of sheets or suitable for forming into sheets: as . . . b: material (as a plastic) in the form of a continuous film. . . .” Id. at 2092. Webster’s defines “sheet,” in relevant part, as “3 a: a broad stretch or surface of something that is usu. thin in comparison to its length and breadth. . . .” Id. at 2091. The Oxford English Dictionary (2d Ed. 1989) defines “sheet” as “9. a. A relatively thin piece of considerable breadth of a malleable, ductile, or pliable substance.” Id. at 224.

The Court of International Trade has also examined the term sheet in various cases. In 3G Mermet Fabric Corp. v. United States, 135 F. Supp. 2d 151 (2001), the Court defined “sheet” as a “material in the form of a continuous stem covering or coating.”

In *Sarne Handbags Corp. v. United States*, 100 F. Supp. 2d 1126 (2000), the Court defined the term “sheeting” as follows:

[T]he common meaning of “sheeting” is material in the form of or suitable for forming into a broad surface of something that is unusually thin, or is a material in the form of a continuous thin covering or coating.

In HQ 965889, dated March 17, 2003, geotextile material manufactured from woven mesh visibly coated on both sides with plastics was classified in heading 3926, HTSUSA. In so doing, we determined that the open spaces of the geotextile material were large enough that the material could not be considered to have a “broad surface.” The unusually wide spacing in the weave interrupts any sort of surface continuity that could be formed, with each warp and weft yarn essentially standing alone, except where they intersect. The weave was not tight enough, and the yarns were not close enough, for them to form a continuous surface.

Similarly, the World Customs Organization’s (WCO) Harmonized System Committee (HSC) classified substantially similar merchandise in subheading 3926.90, HTSUSA. See Annex L/5 to Doc. NC0590B2 (HSC/29/May 2002). The HSC did not consider the geotextile material, with its large open weave, to be a “sheet.” See Annex G/11 to Doc. NC0510E2 (HSC/28/Nov. 2001).

The instant extruded polyethylene mesh, like the geotextile material of HQ 965889 and that classified by the HSC, has open spaces and cannot be considered to have a broad surface. Thus, the mesh lacks the continuity necessary to be classified as a sheet of plastics of heading 3920, HTSUSA. Accordingly, the extruded polyethylene mesh is classified in subheading 3926.90.9880, HTSUSA, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other, Other.”

HOLDING:

NY H88635, dated February 21, 2002, is hereby revoked.

The extruded polyethylene mesh is classified in subheading 3926.90.9880, HTSUSA, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other, Other.” The general column one rate of duty is 5.3% *ad valorem*.

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

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967349
CLA-2 RR:CR:TE 967349 KSH
TARIFF NO.: 3926.90.9880

MR. CHRIS MURRAY
AMERICAN CARGO EXPRESS, INC.
Newark International Airport/Seaport
435 Division Street
Elizabeth, NJ 07201

RE: Revocation of New York Ruling Letter (NY) D80028, dated July 28, 1998; Classification of extruded polypropylene mesh.

DEAR MR. MURRAY:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) D80028, issued to you on behalf of your client, Power Aisle, Inc., on July 28, 1998, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of extruded polypropylene mesh. The article was classified in subheading 3920.20.0000, HTSUSA, which provides for "other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials: of polymers of polypropylene." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY D80028.

FACTS:

The product consists of extruded polypropylene mesh made in a continuous extrusion process and not from pre-existing filaments. This mesh can be placed over trees and plants to protect vegetables and fruits from birds. The mesh will be sold in a package and measure 7 feet by 20 feet.

ISSUE:

Whether the extruded polypropylene mesh is classified in heading 3926, HTSUSA, or heading 3920, 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.

Heading 3920, HTSUSA, provides for "Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials."

Note 10 to Chapter 39, HTSUS, provides:

In headings 3920 and 3921, the expression “plates, sheets, film, foil and strip” applies only to plates, sheets, film, foil and strip (other than those of chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

The term “sheets” is not defined in the text of the HTSUSA or the Explanatory Notes. When terms are not so defined, they are construed in accordance with their common and commercial meaning. Nippon Kogasku (USA), Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982).

Webster’s Third New International Dictionary (Webster’s) (1986) defines “sheeting,” in relevant part, as “1: material in the form of sheets or suitable for forming into sheets: as . . . b: material (as a plastic) in the form of a continuous film. . . .” Id. at 2092. Webster’s defines “sheet,” in relevant part, as “3 a: a broad stretch or surface of something that is usu. thin in comparison to its length and breadth. . . .” Id. at 2091. The Oxford English Dictionary (2d Ed. 1989) defines “sheet” as “9. a. A relatively thin piece of considerable breadth of a malleable, ductile, or pliable substance.” Id. at 224.

The Court of International Trade has also examined the term sheet in various cases. In 3G Mermet Fabric Corp. v. United States, 135 F. Supp. 2d 151 (2001), the Court defined “sheet” as a “material in the form of a continuous stem covering or coating.”

In Sarne Handbags Corp. v. United States, 100 F. Supp. 2d 1126 (2000), the Court defined the term “sheeting” as follows:

[T]he common meaning of “sheeting” is material in the form of or suitable for forming into a broad surface of something that is unusually thin, or is a material in the form of a continuous thin covering or coating.

In HQ 965889, dated March 17, 2003, geotextile material manufactured from woven mesh visibly coated on both sides with plastics was classified in heading 3926, HTSUSA. In so doing, we determined that the open spaces of the geotextile material were large enough that the material could not be considered to have a “broad surface.” The unusually wide spacing in the weave interrupts any sort of surface continuity that could be formed, with each warp and weft yarn essentially standing alone, except where they intersect. The weave was not tight enough, and the yarns were not close enough, for them to form a continuous surface.

Similarly, the World Customs Organization’s (WCO) Harmonized System Committee (HSC) classified substantially similar merchandise in subheading 3926.90, HTSUSA. See Annex L/5 to Doc. NC0590B2 (HSC/29/May 2002). The HSC did not consider the geotextile material, with its large open weave, to be a “sheet.” See Annex G/11 to Doc. NC0510E2 (HSC/28/Nov. 2001).

The instant extruded polypropylene mesh like the geotextile material of HQ 965889 and that classified by the HSC, has open spaces and cannot be considered to have a broad surface. Thus, the mesh lacks the continuity necessary to be classified as a sheet of plastics of heading 3920, HTSUSA. Ac-

cordingly, the extruded polypropylene mesh is classified in subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other, Other."

HOLDING:

NY D80028, dated July 28, 1998, is hereby revoked.

The extruded polypropylene mesh is classified in subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other, Other." The general column one rate of duty is 5.3% *ad valorem*.

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