

Bureau of Customs and Border Protection

Notice of Proposed Rulemaking

19 CFR Part 101

Extension of Port Limits of Memphis, TN

AGENCY: Customs and Border Protection, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to extend the port limits of the port of Memphis, Tennessee, to include all of the territory within the limits of DeSoto County, northern Mississippi. The port extension is being proposed in order to facilitate economic development in northern Mississippi, and to provide convenience and improved service to carriers, importers, and the general public.

DATES: Comments must be received on or before March 15, 2004.

ADDRESSES: Comments must be submitted to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, (Attention: Regulations Branch), 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at the CBP, 799 9th Street, NW., Washington, DC 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: Dennis Dore, Office of Field Operations, 202-927-6871.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Customs and Border Protection (CBP) is proposing to extend the port limits of the port of Memphis, to include all of the territory within the limits of DeSoto County, northern Mississippi, as described below. Recently, northern Mississippi has experienced marked business expansion and population growth. Currently, businesses located in northern Mississippi utilize the nearest port of entry at Memphis, Tennessee, and the port limits of Memphis do not extend beyond the Tennessee border. The proposed extension of the

port limits to include the specified territory will facilitate economic development in northern Mississippi, and provide convenience and improved service to carriers, importers, and the general public.

Current Port Limits of Memphis, Tennessee

The current port limits of Memphis, Tennessee are described as follows in Treasury Decision (T.D.) 84-126 of May 14, 1984:

[T]he corporate limits of the city of Memphis, Tennessee* * * [and] all of the territory within the limits of Shelby County, Tennessee.

Proposed Port Limits of Memphis, Tennessee

CBP proposes to extend the port limits of the port of Memphis, Tennessee, to include DeSoto County, Mississippi so that the description of the port limits would read as follows:

The city limits of Memphis, Tennessee and all of the territory within the limits of Shelby County, Tennessee and DeSoto County, Mississippi.

Proposed Amendment to Customs Regulations

If the proposed port limits are adopted, CBP will amend § 101.3(b)(1), Customs Regulations (19 CFR 101.3(b)(1)) to reflect the new boundaries of the Memphis port of entry.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

Signing Authority

The document is being issued in accordance with section 0.2(a) of the Customs Regulations (19 CFR 0.2(a)).

Comments

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to CBP. All such comments received from the public, pursuant to this notice of proposed rulemaking, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and section 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, Department of Homeland Security, 799 9th Street, NW., Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-

related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq). Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Isaac D. Levy, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

Dated: January 9, 2004.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Tom Ridge,

Secretary, Department of Homeland Security.

[Published in the Federal Register, January 14, 2004 (69 FR 2092)]

Proposed Rule

19 CFR Part 162

RIN 1651-AA48

Publication of Administrative Forfeiture Notices

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

ACTION: Proposed rule.

SUMMARY: The Customs Regulations set forth the procedure that the Bureau of Customs and Border Protection (CBP) must follow in administrative forfeiture proceedings, as required by section 607 of the Tariff Act of 1930, as amended. The statutory language allows for administrative forfeiture when CBP seizes: A prohibited importation; a transporting conveyance if used to import, export, transport or store a controlled substance or listed chemical; any monetary instrument within the meaning of 31 U.S.C. 5312(a)(3); or any convey-

ance, merchandise or baggage for which its value does not exceed \$500,000.

If the value of the seized property exceeds \$2,500, the current regulations require CBP to publish notice of seizure and intent to forfeit in a newspaper circulated at the Customs port and in the judicial district where the seizure occurred. When the value of the seized property does not exceed \$2,500, CBP may publish the notice by posting it in a conspicuous place accessible to the public at the customhouse nearest the place of seizure.

This document proposes to amend the Customs Regulations by raising the threshold value of seized property for which CBP must publish a notice in a newspaper from \$2,500 to \$5,000. By changing the requirements for publication of administrative forfeiture notices, the proposed amendment would significantly reduce the publication costs incurred by CBP, which have often exceeded the value of seized property.

DATE: Comments must be received by March 15, 2004.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Greg Olsavsky, Chief, Fines Penalties & Forfeitures Branch, (202) 927-3119.

SUPPLEMENTARY INFORMATION:

Background

Section 162.45 of the Customs Regulations (19 CFR 162.45) sets forth the procedure that the Bureau of Customs and Border Protection (CBP) must follow when it seizes and gives notice of intent to forfeit property under administrative forfeiture proceedings, as required by section 607 of the Tariff Act of 1930, as amended (19 U.S.C. 1607). The statutory language allows for administrative forfeiture when CBP seizes (1) a prohibited importation; (2) a transporting conveyance if used to import, export, transport or store a controlled substance or listed chemical; (3) any monetary instrument within the meaning of 31 U.S.C. 5312(a)(3); or (4) any conveyance, merchandise or baggage for which its value does not exceed \$500,000.

Specifically, current § 162.45(b), Customs Regulations, addresses publication of notices under administrative forfeiture proceedings. If

the value of the seized property exceeds \$2,500, paragraph (b)(1) requires publication of administrative forfeiture notices in a newspaper circulated at the Customs port and in the judicial district where the seizure occurred. All known parties-in-interest are notified of the newspaper and expected dates of publication of the notice.

It is proposed to amend § 162.45(b)(1) to raise the value threshold of property for which CBP must publish an administrative forfeiture notice in a newspaper from \$2,500 to \$5,000.

When the value of the seized property does not exceed \$2,500, current paragraph (b)(2) of § 162.45 allows CBP to publish a notice of seizure and intent to forfeit by posting it in a conspicuous place accessible to the public at the customhouse nearest the place of seizure. If the proposed amendment to paragraph (b)(1) is adopted, the applicability of paragraph (b)(2) would be automatically expanded to seizures of property valued under \$5,000.

CBP last changed the regulation in 1985, when it increased the dollar threshold from \$250 to \$2,500. Since then, inflation has often caused the costs of publication in large metropolitan areas to exceed \$2,500. Thus, in many cases the publication costs can be prohibitive when compared to the value of the property advertised.

If implemented, the proposed change to the regulations would result in estimated yearly savings of at least \$147,000, based on FY 2002 expenditure levels.

Comments

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to CBP, including comments on the clarity of this proposed rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

Regulatory Flexibility Act and Executive Order 12866

CBP does not anticipate that the proposed amendment will have an impact on private parties, as it pertains to the agency's internal operating procedures. For that reason, it is certified that the proposed amendment, if adopted, will not have a significant economic impact on a substantial number of small entities, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Ac-

ordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

For the same reasons, this document does not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

Drafting Information

The principal author of this document was Mr. Fernando Pena, Office of Regulations and Rulings, Customs and Border Protection. However, personnel from other Bureau offices participated in its development.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(b)(1).

List of Subjects in 19 CFR Part 162

Administrative practice and procedure, Customs duties and inspection, Drug traffic control, Exports, Imports, Inspection, Law enforcement, Penalties, Prohibited merchandise, Restricted merchandise, Reporting and recordkeeping requirements, Search warrants, Seizures and forfeitures.

Proposed Amendment to the Regulations

For the reasons stated above, it is proposed to amend part 162 of the Customs Regulations (19 CFR part 162) as set forth below.

PART 162—INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation for part 162 and the specific authority citation for § 162.45 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

Section § 162.45 also issued under 19 U.S.C. 1607, 1608.

* * * * *

2. It is proposed to amend the first sentence of paragraph (b)(1) of § 162.45 by removing the monetary amount “\$2,500” and adding in its place “\$5,000”.

Dated: January 8, 2004.

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

General Notices

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

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

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning January 1, 2004, the interest rates for overpayments will be 3 percent for corporations and 4 percent for non-corporations, and the interest rate for underpayments will be 4 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278; telephone (317) 298-1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85-93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2003-138, the IRS determined the rates of interest for the calendar quarter beginning January 1, 2004, and ending March 31, 2004. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). For corporate overpayments, the rate is the Federal short-term rate (1%) plus two

percentage points (2%) for a total of three percent (3%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). These interest rates are subject to change for the calendar quarter beginning April 1, 2004, and ending June 30, 2004.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate over-payments (Eff. 1-1-99) (percent)
070174.....	063075	6	6	.....
070175.....	013176	9	9	.....
020176.....	013178	7	7	.....
020178.....	013180	6	6	.....
020180.....	013182	12	12	.....
020182.....	123182	20	20	.....
010183.....	063083	16	16	.....
070183.....	123184	11	11	.....
010185.....	063085	13	13	.....
070185.....	123185	11	11	.....
010186.....	063086	10	10	.....
070186.....	123186	9	9	.....
010187.....	093087	9	8	.....
100187.....	123187	10	9	.....
010188.....	033188	11	10	.....
040188.....	093088	10	9	.....
100188.....	033189	11	10	.....
040189.....	093089	12	11	.....
100189.....	033191	11	10	.....
040191.....	123191	10	9	.....
010192.....	033192	9	8	.....
040192.....	093092	8	7	.....
100192.....	063094	7	6	.....
070194.....	093094	8	7	.....
100194.....	033195	9	8	.....
040195.....	063095	10	9	.....
070195.....	033196	9	8	.....
040196.....	063096	8	7	.....
070196.....	033198	9	8	.....
040198.....	123198	8	7	.....
010199.....	033199	7	7	6

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate over-payments (Eff. 1-1-99) (percent)
040199.....	033100	8	8	7
040100.....	033101	9	9	8
040101.....	063001	8	8	7
070101.....	123101	7	7	6
010102.....	123102	6	6	5
010103.....	093003	5	5	4
100103.....	033104	4	4	3

Dated: January 6, 2004.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[Published in the Federal Register, January 9, 2004 (69 FR 1593)]

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

Washington, DC, January 14, 2004,

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

**PROPOSED REVOCATION OF A RULING LETTER AND RE-
VOCATION OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CERTAIN WATERPROOF CLOGS**

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 waterproof clogs.

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 waterproof clogs 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 February 27, 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: Kelly Herman, Textiles Branch: (202) 572-8713.

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 waterproof clogs. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) J87291, dated September 10, 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., 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 substan-

tially 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 J87291, CBP ruled that a slip-on, clog-type shoe with a molded 100% rubber upper and outer sole (Item numbers AAW12540, 12541 and 12542) was classified in subheading 6401.99.3000, HTSUSA, which provides for "Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather: Designed for use without closures." Based upon our analysis of the scope of the terms of subheadings 6401.99.3000, HTSUSA and 6401.99.8000, HTSUSA, the Legal Notes, and Treasury Decision (T.D.) 93-88, we have determined that while the clogs are waterproof in that they prevent penetration of water, they are not protective because they are open-heeled. The clogs are properly classified in subheading 6401.99.8000, HTSUSA, the provision for "Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper)."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY J87291 and any other ruling not specifically identified, to reflect the proper classification of the waterproof clogs according to the analysis contained in proposed Headquarters Ruling Letter (HQ) 966827, 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: January 8, 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 J87291
September 10, 2003
CLA-2-64:RR:NC:TA:347 J87291
CATEGORY: Classification
TARIFF NO.: 6401.99.30**

**MS. LINDA BROADFORD
RALPH LAUREN FOOTWEAR
1895 J.W. Foster Blvd.
Canton, MA 02021**

RE: The tariff classification of waterproof footwear from China

DEAR MS. BROADFORD:

In your letter dated August 21, 2003 you requested a tariff classification ruling.

The submitted half pair sample, identified as Item #'s AAW12540, 12541 and 12542, is a slip-on clog-type shoe, approximately 2½-inches high, with a molded 100% rubber upper and outer sole. In your letter you state that this waterproof shoe, which is assembled entirely by molding and does not cover the wearer's ankle, is a gardener's clog that is designed to be used as a protection against wetness, i.e., to keep the wearer's foot dry. The shoe has a textile lining and a removable footbed insole. You also state in your letter that the three style numbers you have indicated for this sample item reflect only differences of color and not differences of materials or construction. Therefore, the same tariff classification will be applicable to all three of the item numbers you have identified for this submitted sample.

The applicable subheading for this shoe, identified with Item numbers "AAW12540, 12541, 12542", will be 6401.99.30, Harmonized Tariff Schedule of the United States (HTS), which provides for waterproof footwear, with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes; which does not cover the ankle; which is designed to be a protection against water, oil or cold or inclement weather; and which is designed to be used without closures. The rate of duty will be 25% ad valorem.

We are returning the sample as you requested.

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 rul-

ing, contact National Import Specialist Richard Foley at 646-733-3042.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966827
CLA-2 RR:CR:TE 966827 KSH
TARIFF NO.: 6401.99.8000

MS. LINDA BROADFORD
RALPH LAUREN FOOTWEAR
1895 J.W. Foster Blvd.
Canton, MA 02021

RE: Revocation of New York Ruling Letter (NY) J87291, dated September 10, 2003; Classification of certain waterproof clogs

DEAR MS. BROADFORD:

This is in response to your letter of October 27, 2003, in which you request reconsideration of New York Ruling Letter (NY) J87291, issued to you on September 10, 2003, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a slip-on, clog-type shoe with a molded 100% rubber upper and outer sole. The clogs have been identified by Item numbers AAW12540, 12541 and 12542. The different numbers signify different colors. The clogs were classified in subheading 6401.99.3000, HTSUSA, which provides for "Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather: Designed for use without closures." You argue that inasmuch as the heels of the clogs are exposed, they are not designed as protection against water, oil, grease or chemicals or cold or inclement weather. We have reviewed NY J87291 and found it to be in error. Therefore, this ruling revokes NY J87291.

FACTS:

One sample was submitted in conjunction with your request for reconsideration. The sample is identified as Style AAW12541. It is a slip-on, clog-type shoe with a molded 100% rubber upper and outer sole. The clog has a textile lining and a removable footbed insole. The wearer's heel would be completely exposed when worn.

ISSUE:

Whether the clog is classifiable as protective footwear under subheading 6401.99.3000, HTSUSA, or as waterproof footwear under subheading 6401.99.8000, HTSUSA.

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.

At issue, essentially, is whether the instant clogs are designed to protect against mere penetration by liquids, or designed to be worn over or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather.

“Waterproof footwear” is defined in Additional U.S. Note 3 to chapter 64, HTSUSA, which states:

For the purposes of heading 6401 “waterproof footwear” means footwear specified in the heading, designed to protect against penetration by water or other liquids, whether or not such footwear is primarily designed for such purposes.

The clog is clearly waterproof footwear. Subheading 6401.99, HTSUSA, provides for other waterproof footwear, other than that covering the ankle but not covering the knee, that is designed to be worn over or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather.

On November 17, 1993, in the Customs Bulletin, Volume 27, Number 46, CBP published Treasury Decision (T.D.) 93-88, which contains certain footwear definitions used by CBP import specialists to classify footwear. The footwear definitions were provided merely as guidelines and, although consulted here, are not to be construed as CBP rulings. With regard to “protection,” T.D. 93-88 states, in pertinent part:

Footwear is designed to be a “protection” against water, oil or cold or inclement weather only if it is substantially more of a “protection” against those items than the usual shoes of that type. For example, a leather oxford will clearly keep your feet warmer and drier than going barefoot, but they are not a “protection” in this sense. On the other hand the snow-jogger is the protective version of the non-protective jogging shoe.

Generally, open toe/open heel footwear is not designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. T.D. 93-88 states:

In “open” toe shoes, all or part of the front of the wearer’s toes can be seen. In open heeled shoes, all or part of the back of the wearer’s heel can be seen.

For footwear classification purposes, CBP interprets the “heel” to be the rearmost boney part of the human foot, the top of which is located just below the Achilles tendon.

As previously noted, examination of the sample clog revealed no raised ridge at the heel. Since all of part of the wearer's heel would be visible, the clog is "open heeled" footwear. T.D. 93-88 provides examples of footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. Under the heading "Protection," it is stated in pertinent part that, footwear that is a "protection" against water includes:

4. Molded rubber clogs, which are the same shape as traditional Dutch wooden shoes. They are used in gardening on wet terrain.

Although it is a molded rubber clog, the clog is not in the same shape as traditional Dutch wooden shoes which have a partial closed heel. In light of the above analysis, and of the fact that the clogs constitute "open heeled" footwear, we find that the clogs are not designed to be worn over or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather. See Headquarters Ruling Letter (HQ) 963224, dated March 22, 2003 (and compare HQ 965718, dated September 5, 2002).

HOLDING:

NY J87291, dated September 10, 2003, is hereby revoked.

The waterproof clog is classified in subheading 6401.99.8000, HTSUSA, the provision for "Waterproof footwear with outer soles and uppers of rubber or plastics, the uppers of which are neither fixed to the sole nor assembled by stitching, riveting, nailing, screwing, plugging or similar processes: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having foxing or a foxing-like band applied or molded at the sole and overlapping the upper)." The General Column 1 Rate of Duty is free.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CANISTER OF LE BOZEC RAIN REPELLENT

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

ACTION: Notice of revocation of ruling letter and treatment relating to the classification of a canister of Le Bozec rain repellent, item N. 402-Q80-1.

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

Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling concerning the classification of a canister of Le Bozec rain repellent, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on November 5, 2003, in Volume 37, Number 45, of the *Customs Bulletin*. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after March 28, 2004.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch (202) 572–8784.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, Customs published a notice in the November 5, 2003, *Customs Bulletin*, Volume 37, Number 45, proposing to revoke New York Ruling Letter (NY) I83524, dated July 31, 2002, and to revoke any treatment accorded

to substantially identical merchandise. No comments were received in response to this notice.

In NY I89445, a canister of Le Bozec rain repellent was classified in subheading 3208.90.00, HTSUS, which provides for "Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a nonaqueous medium; solutions as defined in note 4 to this chapter: Other." It is now Customs position that this substance was not correctly classified in NY I89445 because heading 3208, HTSUS, describes only the chemical portion of the goods. The canister and rain repellent are more specifically provided for as a part of a spraying machine in subheading 8424.90.90, HTSUS, the provision for "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Parts: Other."

As stated in the proposed notice, this revocation will cover any rulings on this issue 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 issue subject to this notice should have advised Customs 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, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was 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 this final decision.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY I89445 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966611, which is set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs 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: January 7, 2004

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966611
January 7, 2004
CLA-2 RR:CR:GC 966611 AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 8424.90.90

MR. JAMES H. LUNDQUIST
PAVIA & HARCOURT LLP
600 Madison Avenue
New York, NY 10022

RE: Revocation of NY I89445; Canister of Le Bozec Rain Repellent

DEAR MR. LUNDQUIST:

This is in reference to your letter, dated June 18, 2003, to the Director of Customs National Commodity Specialist Division, New York, requesting reconsideration of New York Ruling Letter (NY) I89445, issued to Kuehne & Nagel, Inc., on March 6, 2003, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of Le Bozec rain repellent. Your letter was forwarded to this office for reply. We have reviewed this ruling and believe it is incorrect. This ruling sets forth the correct classification.

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. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY I89445 was published on November 5, 2003, in the *Customs Bulletin*, Volume 37, Number 45. No comments were received in response to this notice.

FACTS:

In NY I89445, Customs classified the merchandise in subheading 3208.90.00, HTSUS, the provision for "Paints and varnishes (including enamels and lacquers) based on synthetic polymers or chemically modified natural polymers, dispersed or dissolved in a nonaqueous medium; solutions as defined in note 4 to this chapter: Other," based on Customs Laboratory report NY20030042, which states, in pertinent part, the following:

Based on the information submitted by the inquirer, the product named Foralkyl 2211 is composed of a mixture of five chemical ingredients delivered in a pressurized can, which is outfitted on the rain repellent system of commercial aircraft.

The most active ingredient is the SF 1706 (fluorinated olefin in C6, a polysiloxane), and functioned [sic] as a coating on the windshield which will remove the water at a certain speed.

The pressurized can is outfitted on the rain repellent system of commercial aircraft. When the visibility is bad under rainy conditions, the pilot pushes a switch that will activate the complete system and spray some fluid on the windshield. The fluid will then remove the water on the windshield and improve the visibility of the pilot.

Based on the submitted chemical composition, the product is a solution specified in headings 3901 to 3913 in volatile organic solvents with the weight of the solvent exceeds [sic] of the weight of the solution.

The rain repellent system on commercial aircraft mentioned in the Laboratory Report consists of the instant pressurized canister of rain repellent, item N. 402-Q80-1, which fits into a repository, and is connected by tubing to a reservoir assembly incorporating a glass reservoir, manometer, and spray head. The system is activated electronically in the cockpit of the aircraft. The system is engineered to withstand extreme temperatures and changes in atmospheric pressure necessary for systems used on aircraft.

ISSUE:

Is a pressurized canister of rain repellent, designed for use in a spray system for aircraft windshields, classified as to its chemical components or as a part of a spray system or as a part of an aircraft?

LAW AND ANALYSIS:

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

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order.

In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The following HTSUS headings are under consideration:

3208 Paints and varnishes (including enamels and lacquers)
 based on synthetic polymers or chemically modified natural
 polymers, dispersed or dissolved in a nonaqueous medium;
 solutions as defined in note 4 to this chapter:

3208.90.00 Other

* * * * * * *

8424 Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof:

8424.90 Parts:

8424.90.90 Other

* * * * *

8803 Parts of goods of heading 8801 or 8802:

8803.30.00 Other parts of airplanes or helicopters

The ENs to heading 8424 state, in pertinent part, the following:

This heading covers machines and appliances for projecting, dispersing or spraying steam, liquids or solid materials (e.g., sand, powders, granules, grit or metallic abrasives) in the form of a jet, a dispersion (whether or not in drips) or a spray.

Section XVII, note 2(e) states, in pertinent part, the following:

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

(e) Machines or apparatus of headings 8401 to 8479, or parts thereof;

Section XVI, Note 2 states, in pertinent part, the following:

Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

(a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;

* * * * *

In NY I89445, we classified the instant merchandise in heading 3208, HTSUS, as to its chemical composition. The merchandise, however, is not simply a chemical solution. Its canister is as important to the use of the merchandise as is the rain repellent that it contains.

Heading 8803, HTSUS, is explicitly excluded by Section XVII, note 2(e). As described in your submission requesting reconsideration of NY I89445, the canister of rain repellent is part of an elegantly designed precision mechanical appliance for spraying a liquid specifically for use only on civilian airplane windshields. Parts of such spraying systems are described in heading 8424, HTSUS, as parts, and are therefore excluded from headings in Section XVII (e.g., heading 8803) by note 2(e), *supra*.

Furthermore, classification in heading 8424, HTSUS, is directed by Note 2(b) to Section XVI. As a part of a mechanical appliance for spraying a liquid that is not specified elsewhere as a good of Section XVI, the merchandise is classified with the machine. (Note 2(b) to Section XVI, *supra*). Lastly, the description of parts of spraying apparatus in EN 84.24 closely fits the instant merchandise.

You believe that HQ 962615, dated September 2, 1999, should govern this matter. In that ruling, we classified a hydraulic fluid reservoir for aircraft in heading 8803, HTSUS, as a part of an airplane. HQ 962615 is distinguishable from this case in that there is no heading other than heading 8803, HTSUS, which describes the hydraulic fluid reservoir.

Therefore, we find that the Le Bozec Aircraft rain repellent canister is classified in subheading 8424.90.90, HTSUS, the provision for: "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Parts: Other."

HOLDING:

The Le Bozec Aircraft rain repellent canister is classified in subheading 8424.90.90, HTSUS, the provision for: "Mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof: Parts: Other."

EFFECT ON OTHER RULINGS:

NY I89445 is revoked.

In accordance with 19 U.S.C. § 1625(c)(1), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

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

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF CLASSIFI-
CATION OF MEN'S OR BOYS' SUIT-TYPE JACKETS**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of men's or boys' suit-type jackets.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs & Border Protection (CBP) is revoking one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of men's or boys' suit-type jackets. CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published on December 3, 2003, in Volume 37, Number 49, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

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

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Textiles Branch, at (202) 572-8814.

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 that 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 Title VI, notice proposing to revoke New York

Ruling Letter (NY) I80881, dated May 21, 2002, and to revoke any treatment accorded to substantially identical merchandise was published in the December 3, 2003, CUSTOMS BULLETIN, Volume 37, Number 49. CBP received no comments.

In NY I80881, CPB classified two jackets under subheading 6203.31.5010, TSUS, as jackets for suits described in Note 3(a) to Chapter 62, HTSUS. However, as the importer will sell the jackets as separates, we find that the jackets do not satisfy the terms of Note 3(a) to Chapter 62, HTSUS, because that note requires the presence of two garments, one to cover the upper and one to cover the lower part of the body. The jackets are correctly classified under subheading 6203.31.5020, HTSUS, as other suit-type jackets and blazers of wool or fine animal hair.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, have been 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 have advised CBP during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY I80881 and revoking any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 966315, which is attached 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: January 12, 2004

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966315
January 12, 2004
CLA-2: RR:CR:TE 966315 RH
CATEGORY: Classification
TARIFF NO.: 6203.31.5020

MS. DANA N. MOBLEY
J.C. PENNEY PURCHASING CORPORATION
P.O. Box 10001
Dallas, TX 75301

RE: Revocation of NY I80881; Men's or Boy's Suit-type Jackets; Subheading 6203.31.5020, HTSUS; Separates; Note 3(a) to Chapter 62, HTSUS

DEAR MS. MOBLEY:

On May 21, 2002, Customs (now Customs & Border Protection (CBP)) issued New York Ruling Letter (NY) I80881 to your company concerning the classification of men's suit-type jackets from Guatemala. In that ruling, CBP classified the garments under subheading 6203.31.5010 of the Harmonized Tariff Schedule of the United States (HTSUS), as suit-type jackets and blazers for suits described in Note 3(a) to Chapter 62, HTSUS. Merchandise liquidated under that tariff provision is dutiable at the general column one rate at 18.4 percent *ad valorem* and is subject to textile restraint category 443.

For the reasons set forth below, we now find that the jackets are properly classified under subheading 6203.31.5020, HTSUS, as other suit-type jackets and blazers. Merchandise liquidated under that tariff provision is dutiable at the same rate stated above, but is subject to textile restraint category 433.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 1993), notice of the proposed revocation of NY I80881 was published on December 31, in Vol. 37, No. 49 of the CUSTOMS BULLETIN. CBP received no comments.

FACTS:

A description of the merchandise at issue in NY I80881 reads as follows:

Both jackets are made of woven worsted wool fabric whose yarn has an average fiber diameter of 18.5 microns; both have linings made of 100

percent woven acetate fabric. Style 552-1234 features a collar with lapels, a three button frontal opening, two pockets with flaps below the waist, three interior pockets, a hemmed bottom, three button sleeves, and a chest pocket. It is made of six panels, two front, two side and two back with a center seam down the back of the jacket. Style 552-5678 features a collar with lapels, a three button frontal opening, two pockets with flaps below the waist, two interior pockets, a hemmed bottom, four button sleeves, and a chest pocket. It is made of six panels, two front, two side and two back with a center seam down the back of the jacket.

ISSUE:

Whether the instant garments are classifiable under subheading 6203.31.5010, HTSUS, as men's or boys' suit-type jackets for suits described in Note 3(a) to Chapter 62, HTSUS, or as other suit-type jackets under subheading 6203.31.5020, HTSUS?

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Heading 6203, HTSUS, provides for "Men's or boy's suits, ensembles, suit-type jackets, blazers, trousers, bib and breeches and shorts (other than swimwear)." The term "suit" is defined by Note 3(a) to Chapter 62, HTSUS, as follows:

For the purposes of headings 6203 and 6204:

(a) The term "suit" means a set of garments composed of two or three pieces made up, in respect of their outer surface, in identical fabric and comprising:

—one suit coat or jacket the outer shell of which, exclusive of sleeves, consists of four or more panels, designed to cover the upper part of the body, possibly with a tailored waistcoat in addition whose front is made from the same fabric as the outer surface of the other components of the set and whose back is made from the same fabric as the lining of the suit coat or jacket; and

—one garment designed to cover the lower part of the body and consisting of trousers, breeches or shorts (other than swimwear), a skirt or a divided skirt, having neither braces nor bibs.

All of the components of a "suit" must be of the same fabric construction, color and composition; they must also be of the same style and of corresponding or compatible size. However, these components may have piping (a strip of fabric sewn into the seam) in a different fabric.

If several separate components to cover the lower part of the body area [are] presented together (for example, two pairs of trousers or trousers and shorts, or a skirt or divided skirt and trousers), the constituent lower part shall be one pair of trousers, or, in the case of women's or girls' suits, the skirt or divided skirt, the other garments being considered separately.

*

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*

In the instant case, J.C. Penney's advised CBP that the jackets at issue are imported and sold as separates. Accordingly, for statistical purposes CBP finds that the suit-type jackets are not "For suits described in Note 3(a)" and are classified under subheading 6203.31.5020, HTSUS.

HOLDING:

NY 180881 is REVOKED. The jackets are classified under subheading 6203.31.5020, HTSUS, which provides for Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Suit-type jackets and blazers: Of wool or fine animal hair: Other." They are dutiable at the general column one rate at 18.4 percent *ad valorem* and the textile category is 433.

The designated textile and apparel category may be subdivided into parts. If so, 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 that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of CBP, which is available for inspection at your local CBP office.

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

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.

19 CFR PART 177

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

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of an artificial tree.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of an artificial Christmas tree under the Harmonized Tariff Schedule of the United States ("HTSUS").

Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before February 27, 2004.

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

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the classification of an artificial Christmas tree. Although in this notice Customs is specifically referring to one ruling, NY J83527, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to

search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

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

In NY J83527 dated April 22, 2003, set forth as Attachment A to this document, Customs classified the artificial Christmas tree in subheading 6702.90.65, HTSUS, as: "[a]rtificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: [o]f other materials: [o]ther: [o]ther."

It is now Customs position that the artificial Christmas tree is classified in subheading 9505.10.25, HTSUS, as "[f]estive, carnival or other entertainment articles . . . : [a]rticles for Christmas festivities and parts and accessories thereof: [c]hristmas ornaments: [o]ther: [o]ther." Proposed HQ 966616 revoking NY J83527 is set forth as Attachment B.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY J83527 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966616. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: January 12, 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 J83527
April 22, 2003
CLA-2-67:RR:NC:SP:225 J83527
CATEGORY: Classification
TARIFF NO. 6702.90.6500

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

RE: The tariff classification of a bendable stick tree from China.

DEAR Ms. YOUNG:

In your letter dated April 4, 2003, on behalf of your client Meijer Distribution, you requested a classification ruling.

The submitted sample is a bendable stick tree identified as item number 921207. This stick tree is composed of 70% wire and 30% plastic. Multiple strands of wire are intertwined together to form the bendable stick tree. The base of the tree is composed of plastic and houses a 2 "C" size battery compartment with an on/off switch on the bottom. The stick tree contains a string of multicolored lights that light up when the switch is in the on position. The batteries enable the lights to twinkle or glow. This stick tree measures 18 inches in height.

Although you identify the submitted sample as a Christmas bendable stick tree, there are no motifs or accepted symbols that would dedicate this tree specifically for use during the Christmas holiday season. In our opinion, the stick tree would be classified in Chapter 67 as artificial foliage. The wire imparts the essential character of this item.

The sample is returned as you requested.

The applicable subheading for the artificial wreath will be 6702.90.6500, Harmonized Tariff Schedule of the United States (HTS), which provides for artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit: Of other materials: Other: Other. The rate of duty will be 17 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 mer-

chandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646-733-3026.

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

[ATTACHMENT B]

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

HQ 966616
CLA-2 RR:CR:GC 966616 NSH
CATEGORY: Classification
TARIFF NO.: 9505.10.25

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

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

DEAR MS. YOUNG:

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

FACTS:

The subject merchandise, item #921207, is referred to as a "Christmas bendable stick tree" by the manufacturer and is composed, by surface area, of 70 percent wire and 30 percent plastic. The item measures approximately 18 inches in height and is composed of multiple strands of green colored wire that are intertwined to form the shaft of the tree. Individual green wires are interspersed and protrude from the shaft of the tree, representing its branches; those wires at the bottom of the shaft are the longest and the wires taper off in length as they approach the top of the shaft, giving the item a recognizable evergreen tree appearance. At the tip of each branch is a single LED light that is red, green, or yellow in color. There are a total of 45 branches, and thus a total of 45 LED lights, on the tree. The base of the tree is composed of plastic and houses a two "C" size battery compartment with an on/off switch on the bottom. When turned on, the lights on the tree twinkle or glow.

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

the tree is properly classified under heading 9505, HTSUS, which provides, in pertinent part, for “[f]estive, carnival or other entertainment articles . . .”

ISSUE:

Whether the subject tree is properly classified as artificial foliage in heading 6702, HTSUS, or as a festive, carnival or other entertainment article under heading 9505, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

The HTSUS provisions under consideration are as follows:

6702	Artificial flowers, foliage and fruit and parts thereof; articles made of artificial flowers, foliage or fruit:
6702.90	Of other materials:
	Other:
6702.90.65	Other
* * *	* * *
9505	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:
9505.10	Articles for Christmas festivities and parts and accessories thereof:
	Christmas Ornaments:
	Other:
9505.10.25	Other

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

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

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

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

In considering the *Midwest* standards, the item in question is not predominately of precious or semiprecious stones, precious metal or metal clad with precious metal. It is intended by the manufacturer to represent a tree, as evidenced by both its shape and color. Furthermore, the item is decorated with colored lights at the ends of its branches, which, when power is turned on, glow and twinkle like those commonly associated with Christmas trees. Although trees may be adorned with blinking lights during holidays other than Christmas, it seems apparent that an evergreen shaped artificial tree with colored and blinking lights is representative, and intended to be, a Christmas tree. Customs believes that a tree can be decorated to a greater or lesser degree and still be considered a festive article for purposes of being classified under heading 9505, HTSUS. We note that in prior rulings, Customs has held that an evergreen shaped artificial tree that is decorated with just one type of ornamentation, e.g., lights or acrylic beads, has been recognized as a Christmas tree under heading 9505, HTSUS. See NY J84354 dated May 16, 2003 and NY G88387 dated April 2, 2001.

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

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

HOLDING:

The item at issue herein is classified in subheading 9505.10.25, HTSUS, as “[f]estive, carnival or other entertainment articles . . . : [a]rticles for

Christmas festivities and parts and accessories thereof: [c]hristmas ornaments: [o]ther: [o]ther.”

EFFECT ON OTHER RULINGS:

NY J83527 is REVOKED.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

