

Bureau of Customs and Border Protection

General Notices

Notice of Cancellation of Customs Broker Permit

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

ACTION: General Notice

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

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
Eric Guillermety-Perez	4914529	San Juan
Sherri Boynton	98038	Los Angeles

DATED: January 12, 2005

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

[Published in the Federal Register, January 21, 2005 (70 FR 3220)]

Notice of Cancellation of Customs Broker License

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

ACTION: General Notice

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

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
Virginia A. Miller & Co., Inc.	08049	Houston

DATED: January 12, 2005

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

[Published in the Federal Register, January 21, 2005 (70 FR 3220)]

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

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

ACTION: General Notice

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

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
Nardo Soriano	9216	San Francisco
Ronald C. Spitz	3988	New York
Irwin M. Wortman	3243	New York

DATED: January 12, 2005

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

[Published in the Federal Register, January 21, 2005 (70 FR 3220)]

Notice of Cancellation of Customs Broker Permit

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

ACTION: General Notice

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

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
FSP Customs Brokerage, Inc. James MacNeill	28-04-BEX	San Francisco

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
Solaris Import Management Group	27-03-GF6	Los Angeles
AEI Drawback Services, Inc.	12654-P	San Francisco
Danzas Drawback Services	09-04-MJ8	Buffalo
Air Cargo Sales, Inc.	53-03-DH1	Houston
MEC Transport Corp.		

DATED: January 12, 2005

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

[Published in the Federal Register, January 21, 2005 (70 FR 3220)]

Notice of Cancellation of Customs Broker License

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

ACTION: General Notice

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

<u>Name</u>	<u>Permit #</u>	<u>Issuing Port</u>
FSP Customs Brokerage, Inc.	22250	San Francisco
Nathan Levine	3913	New York
American Customs Service, Inc.	14532	Los Angeles

DATED: January 12, 2005

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

[Published in the Federal Register, January 21, 2005 (70 FR 3219)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, January 21, 2005

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

Sandra L. Bell for MICHAEL T. SCHMITZ,
*Assistant Commissioner,
Office of Regulations and Rulings.*

**MODIFICATION OF RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF THE “SAFE START IV START PAK”**

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

ACTION: Notice of modification of a tariff classification ruling letter and revocation of treatment relating to the classification of the “Safe Start IV Start Pak”

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is modifying a ruling concerning the tariff classification of the “Safe Start IV Start Pak,” under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed modification was published on November 10, 2004, in Volume 38, Number 46, of the *Customs Bulletin*. No comments were received in response to this notice.

EFFECTIVE DATE: This notice is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 3, 2005.

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 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, CBP published a notice in the November 10, 2004, *Customs Bulletin*, Volume 38, Number 46, proposing to modify Headquarters Ruling Letter (HQ) 555520, dated October 29, 1990, and to revoke any treatment accorded to substantially identical merchandise to the “Safe Start IV Start Pak”. No comments were received in response to this notice.

In HQ 555520, CBP classified the IV Start Pak as a “set” under GRI 3. Using GRI 3(c), the entire set was classified in heading 4821, HTSUS, the provision for the identification label. CBP reasoned that all of the articles in the set merited equal consideration and none provided the essential character of the set. We no longer believe that the paper ID label equally merits consideration in the classification of this set.

As stated in the proposed notice, this modification 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 CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by 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 involving the same or similar merchandise, or the importer's or CBP's previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised CBP during 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.

CBP, pursuant to section 625(c)(1), is modifying HQ555520, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967207, attached to this document. Additionally, pursuant to section 625(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 11, 2005

James A. Seal for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment

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

HQ 967207
January 11, 2005
CLA-2 RR:CR:GC 967207 AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 4015.19.0550

BRIAN BURKE, ESQ.
RODE & QUALEY
295 Madison Ave.
New York, NY 10017

RE: HQ 555520; "Safe Start IV Start Pak"

DEAR MR. BURKE:

This is in reference to Headquarters Ruling Letter (HQ) 555520, issued to your client, Becton Dickinson and Company, on October 29, 1990, concerning the classification and qualification for duty exemptions available under chapter 98 of the Harmonized Tariff Schedule of the United States

(HTSUS), of the “Safe Start IV Start Pak” and the “E–Z Prep Kit.” We have reviewed the decision in HQ 555520 and have determined that the classification set forth in that ruling for the “Safe Start IV Start Pak” is in error. This ruling modifies HQ 555520 with respect to the classification, under the HTSUS, of the “Safe Start IV Start Pak” only.

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, CBP published a notice in the November 10, 2004, *Customs Bulletin*, Volume 38, Number 46, proposing to modify Headquarters Ruling Letter (HQ) 555520, dated October 29, 1990, and to revoke any treatment accorded to substantially identical merchandise. No comments were received in response to this notice.

FACTS:

The “Safe Start IV Start Pak” consists of the following articles: a pair of seamless latex gloves, a Tegaderm® transparent dressing, an alcohol wipe, a povidine-iodine topical skin preparation solution, an ointment containing povidine-iodine, a latex tourniquet, gauze sponges, a roll of plastic tape, and an identification label.

The IV Start Pak is used in the following manner: the gloves are donned by the health care provider; the tourniquet is tied around the patient’s arm to identify a suitable vein and then loosened; the skin is cleansed with the iodine solution and then wiped away with the alcohol wipe and possibly the gauze sponge; the tourniquet is retied and the IV catheter (not included) is inserted into the patient’s vein, secured with the tape and possibly positioned with the gauze sponge; the ointment is applied to the insertion site and the Tegaderm® dressing is applied over it; the label is then filled out and applied on or near the dressing. The gauze and tape would also be used to cover the wound created if the IV insertion attempt was unsuccessful.

In HQ 555520, Customs and Border Protection (“CBP”) classified the IV Start Pak as a “set” under GRI 3. Using GRI 3(c), the entire set was classified in heading 4821, HTSUS, the provision for the identification label. CBP reasoned that all of the articles in the set merited equal consideration and none provided the essential character of the set.

ISSUE:

Whether the identification label in a kit consisting of a pair of seamless latex gloves, a Tegaderm® transparent dressing, an alcohol wipe, a Povidine-iodine topical skin preparation solution, an ointment containing Povidine-iodine, a latex tourniquet, gauze sponges, a roll of plastic tape, and an identification label equally merits consideration in a GRI 3(c) analysis of the merchandise.

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. The GRIs and the Additional U.S. Rules of Interpretation 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. GRI 6 requires that the classification of goods in the sub-headings of headings shall be determined according to the terms of those

subheadings, any related subheading notes and mutatis mutandis, to the GRIs. 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 HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

GRI 3(b) provides for the classification of goods put up in sets for retail sale. The rule states, in pertinent part, as follows:

- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

Explanatory Note (X) (page 5) to GRI 3(b) states that the term "goods put up in sets for retail sale" means goods which:

- (a) consist of at least two different articles which are, prima facie, classifiable in different headings;
- (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without re-packing.

GRI 3(c) states: "When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

The kit consists of products that, if imported separately, are classifiable in the following subheadings of the HTSUS (2004):

3004 Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale:

3004.90 Other:
 3004.90.91 Other (Povidine-iodine ointment and solution)

* * * * *

3005 Wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes:

3005.10 Adhesive dressings and other articles having an adhesive layer:

3005.10.50 Other (Tegaderm dressing)

* * * * *

3919	Self-adhesive plates, sheets, film, foil, tape, strip and other flat shapes, of plastics, whether or not in rolls:
3919.10	In rolls of a width not exceeding 20 cm:
3919.10.50	Other (plastic tape)
* * *	* * *
4008	Plates, sheets, strip, rods and profile shapes, of vulcanized rubber other than hard rubber:
	Of noncellular rubber:
4008.21.00	Plates, sheets, and strip (tourniquet)
* * *	* * *
4015	Articles of apparel and clothing accessories (including gloves, mittens and mitts), for all purposes, of vulcanized rubber other than hard rubber:
	Gloves, mittens and mitts:
4015.19	Other:
4015.19.05	Medical (latex glove)
* * *	* * *
4821	Paper and paperboard labels of all kinds, whether or not printed:
4821.10	Printed:
4821.10.40	Other (label)

As a preliminary matter, we stated in HQ 555520, that the tourniquet was classified in subheading 4014.90.50. HTSUS, the provision for "Hygienic or pharmaceutical articles . . . of vulcanized rubber other than hard rubber . . . : other: other." In NY H83191, dated July 17, 2001, we classified a latex rubber tourniquet in 4008.21.00, HTSUS, the provision for strips of non-cellular rubber. We find the latter ruling, stating that the tourniquet is more specifically classified as a rubber strip, to be correct.

In HQ 953472, dated March 21, 1994, Customs articulated its position that in order to be classifiable as a set, the individual components must be "used together or in conjunction with another for a single purpose [need] or activity." All of the components in HQ 555520 are used in the process of starting an intravenous line in a patient as described above. Furthermore, the set is sold to health care facilities without the need for repacking. Hence, the IV Start Pak is a set for purposes of GRI 3(b). The ruling then went on to classify the set in the last subheading in numerical order under GRI 3(c), finding that no one item gave the set its essential character.

GRI 3(c) directs us to consider which articles in the set merit consideration in determining the article that imparts the essential character to the set. While we agree with our determination in HQ 555520, that no one item gives this set its essential character, we find that not all of the articles equally merit consideration in the classification determination of this set.

The kit is marketed as an IV Start Pak. The label is an informational device, not essential to the preparation, insertion or securing of the IV itself. In other words, it is ancillary in function to the start of the IV and de minimis in value.

Rather, the gloves, tourniquet, cleansing materials, and the dressing, are all essential to start and secure an IV and are of relatively equal size and weight. Hence, by application of GRI 3(c), the instant set is classified in subheading 4015.19.05, HTSUS, the subheading that occurs last in numerical order among those provisions that merit consideration.

HOLDING:

The "Safe Start IV Start Pak" kit is classified in subheading 4015.19.0550, HTSUSA (annotated), the provision for "Articles of apparel and clothing accessories (including gloves, mittens and mitts), for all purposes, of vulcanized rubber other than hard rubber: Gloves, mittens and mitts: Other: Gloves: Medical: Other. The 2004 column 1 "General" rate of duty is "free." The tourniquet is classified in subheading 4008.21.0000, HTSUSA, the provision for "Plates, sheets, strip, rods and profile shapes, of vulcanized rubber other than hard rubber: Of noncellular rubber: Plates, sheets and strip." The 2004 column 1 "General" rate of duty is "free."

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

HQ 555520 is modified in accordance with this ruling.

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

James A. Seal for MYLES B. HARMON,
Director;
Commercial Rulings Division.

**MODIFICATION OF RULING LETTER AND REVOCATION
 OF TREATMENT RELATING TO TARIFF CLASSIFICATION
 OF CERTAIN BOYS' ATHLETIC-TYPE FOOTWEAR**

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

ACTION: Notice of modification of a tariff classification ruling letter and revocation of treatment relating to the classification of certain boys' athletic-type footwear.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) is modifying one ruling letter relating to the tariff classification of certain boys' athletic-type footwear under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on November 10, 2004, in Volume

38, Number 46, 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 April 3, 2005.

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, notice proposing to modify one ruling letter pertaining to the tariff classification of certain boys' athletic-type footwear was published in the November 10, 2004, CUSTOMS BULLETIN, Volume 38, Number 46. No comments were received.

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

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by CBP to substantially

identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved in substantially identical transactions should have advised CBP during the comment 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 J87067, CBP ruled that certain boys' athletic-type footwear was classified in subheading 6402.99.80, HTSUSA, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Valued over \$6.50 but not over \$12/pair." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error as it pertains to children's shoes in sizes 11.5 through 13. We have determined that the boys' athletic-type footwear in sizes 11.5 through 13 is properly classified in subheading 6402.99.1871, HTSUSA, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: 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 a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except 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): Other: Other: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY J87067 and any other ruling not specifically identified, to reflect the proper classification of the boys' athletic type footwear according to the analysis contained in Headquarters Ruling Letter (HQ) 967128, set forth as an Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise.

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

DATED: January 18, 2005

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,HQ 967128
January 18, 2005
CLA-2 RR:CR:TE 967128 KSH
CATEGORY: Classification
TARIFF NO.: 6402.99.18; 6402.99.80MS. PATRICIA KITTEL
TARGET CUSTOMS BROKERS, INC.
Import Dept., TPS-0885
1000 Nicollet Mall
Minneapolis, MN 55403

RE: Modification of NY J87067, dated August 22, 2003; Classification of boys' athletic footwear

DEAR MS. KITTEL:

This letter is in response to your request of April 7, 2004, for reconsideration of New York Ruling Letter (NY) J87067, dated August 22, 2003, as it pertains to the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of boys' athletic footwear from China. The footwear was classified in subheading 6402.99.80, HTSUSA, which provides for "footwear, in which both the upper's and outer sole's external surface is predominately rubber and/or plastics; which is not "sports footwear"; which does not cover the ankle; in which the upper's external surface area measures over 90% rubber or plastics (including any accessories or reinforcements); which has a foxing or foxing-like band; which is not designed to be a protection against water, oil, or cold or inclement weather; and which is valued over \$6.50, but not over \$12.00 per pair." The determination was based upon an examination of a sample identified as Style 4399 and a finding that the shoes possessed a foxing-like band, i.e., the shoe's unit molded sole vertically overlapped the upper by 3/16 of an inch or more and the overlap substantially encircled the shoe. We have reviewed NY J87067 and found it to be in error as it pertains to the classification of children's American sizes 11.5 through 13. Therefore, this ruling modifies NY J87067. A sample athletic shoe and outer sole was submitted with your request.

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 modification of NY J87067 was published on November 10, 2004, in Vol. 38, Number 46, of the CUSTOMS BULLETIN. CBP received no comments.

FACTS:

The submitted sample shoe is a black and white lace-up athletic shoe which does not cover the ankle. The upper is composed of rubber/plastic material which comprises over 90 percent of the external surface area of the upper (ESAU). The sample has a unit molded sole which overlaps the upper by at least 3/16 of an inch when measured on a vertical plane. Measurements taken at the ball of the foot evidenced that the vertical overlap was 3/16 of an inch on the lateral side. The sidewalls and toe of the shoe overlap more than 3/16 of an inch. The foxing-like band was determined to substantially encircle 58% of the perimeter of the shoe.

ISSUE:

Whether Style 4399 possesses a foxing-like band which substantially encircles the entire perimeter of the shoe.

LAW AND ANALYSIS:

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

In T.D. 93-88, dated November 17, 1993, CBP stated that the typical “foxing band” is “a rubber tape, about 1 inch high by 1/16 inch thick, which covers the lower part of the upper and the edge of the rubber outsole. . . .” CBP defined the term “foxing-like band” as “a band around a substantial portion of the lower part of the upper which either has been attached (cemented, sewn, etc.) to the sole or is part of the same molded piece of rubber or plastics which forms the sole.” In T.D. 83-116, dated June 22, 1983, CBP set forth guidelines relating to the characteristics of foxing and foxing-like bands. CBP noted that unit molded footwear is considered to have a foxing-like band if a vertical overlap of 1/4 of an inch or more exists from where the upper and the outer sole initially meet (measured on a vertical plane), and that if the overlap is less than 1/4 inch, the footwear is presumed not to have a foxing-like band.

In HQ 087098, dated June 12, 1990, CBP ruled that children’s shoes having an overlap of 3/16 of an inch or more and infant’s shoes having an overlap of 1/8 of an inch or more should be considered to have a foxing-like band. If the extent of the overlap covers between 40 percent and 60 percent of the perimeter of the shoe, the shoe may possess a foxing-like band. T.D. 92-108, dated November 10, 1992.

In T.D. 92-108, dated November 25, 1992, CBP set forth its position regarding the interpretation of the term “substantially encircle” as it relates to “foxing and foxing-like bands.” In so doing, CBP formally adopted the “40-60” rule, which is described as a measurement used by CBP import specialists to assist in making a determination pertaining to encirclement. Generally, under this rule, an encirclement of less than 40% of the perimeter of the shoe by the band does not constitute foxing or a foxing-like band. An encirclement of between 40% to 60% of the perimeter of the shoe by the band may or may not constitute a foxing or a foxing-like band depending on whether the band functions or looks like a foxing. An encirclement of over 60% of the perimeter of the shoe by the band is always considered substantial encirclement. Submission of a separate outer sole in conjunction with a sample of the completed shoe will aid CBP’s consideration of application of the 40-60 rule. However, an outer sole, submitted alone, will not be used to determine whether the foxing-like band substantially encircles the perimeter of the shoe.

In your submission you have attached two independent laboratory test results which determined that the percentage of overlap of 3/16 of an inch or

greater encircles less than 40% of the perimeter of the shoe. One of the lab results concluded that the foxing-like band encircled 37% of the perimeter of the shoe and the other lab tested 3 separate samples which indicated an encirclement of 37.95, 37.31 and 36.78%. You attribute the discrepancy between the independent labs' results and CBP results to CBP's presumed utilization of the high point rule. However, CBP did not employ the high point rule. Rather, the difference in measurements is due to the independent labs disregard for the lip running along the entire perimeter of the sole and its relationship to the upper when both components are joined together. When this portion of the foxing-like band is considered the amount of substantial encirclement is 58% of the perimeter of the shoe.

As previously noted, the submitted sample yielded an overlap of at least 3/16 of an inch. However, inasmuch as the submitted sample is a children's size 13¹, an overlap of ¼ of an inch or more is required to find that the shoe possesses a foxing-like band. See T.D. 83-116 which states, in relevant part, that unit molded footwear (i.e., footwear sized 11½ and larger) is considered to have a foxing-like band if a vertical overlap of ¼ inch or more exists from where the upper and the outsole initially meet, measured on a vertical plane. Accordingly, the sample does not have a foxing-like band. In contrast, style 4399 in children's sizes up to and including size 11 do possess a foxing-like band which substantially encircles the perimeter of the shoe.

HOLDING:

NY J87067, dated August 22, 2003, is hereby modified.

Style #4399 in sizes up to and including children's size 11 are classified in subheading 6402.99.80, HTSUSA, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Valued over \$6.50 but not over \$12/pair." The rate of duty is \$.90/pair + 20% *ad valorem*. Style #4399 in children's sizes 11.5 through 13 are classified in subheading 6402.99.18, HTSUSA, which provides for "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: 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 a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except 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): Other." The rate of duty is 6% *ad valorem*.

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.

¹Additional U.S. Note 1(b) to Chapter 64, HTSUSA, provides: "The term 'footwear for men, youths and boys' covers footwear of American youths' size 11½ and larger for males, and does not include footwear commonly worn by both sexes."

