

Bureau of Customs and Border Protection

CBP Decision

(CBP Dec. 05-01)

BONDS

APPROVAL TO USE AUTHORIZED FACSIMILE SIGNATURES AND SEALS

The use of facsimile signatures and seals on Customs bonds by the following corporate surety has been approved effective this date:

XL Specialty Insurance Company

Authorized facsimile signature on file for:

Paul D. Amstutz, Attorney-in-fact

The corporate surety has provided U.S. Customs and Border Protection with copies of the signatures to be used, copies of the corporate seal, and certified copies of the corporate resolution agreeing to be bound by the facsimile signatures and seals. This approval is without prejudice to the surety's right to affix signatures and seals manually.

DATE: January 28, 2005

GLEN E. VEREB,
Chief,

Entry Procedures and Carriers Branch.

General Notices

Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC)

ACTION: Notice of meeting and announcement of membership.

SUMMARY: This notice announces the date, time, and location for the first meeting of the ninth term of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC) and the expected agenda for its consideration. It also announces the new members of the committee.

DATES: The next meeting of the COAC will be held on Tuesday, February 15, 2005, 9 a.m. to 1 p.m.

ADDRESSES: The meeting of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC) will be held in The Ronald Reagan International Trade Center Horizon Ballroom, 1300 Pennsylvania Avenue, NW Washington, D.C. 20229 [phone 202-344-1440; fax 202-344-1969].

FOR FURTHER INFORMATION CONTACT: Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528; telephone 202-282-8431; facsimile 202-282-8504.

SUPPLEMENTARY INFORMATION: The first meeting of the ninth term of Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC) will be held at the date, time and location specified above. This notice announces the expected agenda for its consideration and the new members of the committee. This meeting is open to the public; however, participation in COAC deliberations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to attend the meeting for special presentations. Since seating is limited, all persons attending this meeting should provide notice by 2:00 P.M. EST on Wednesday, February 9, 2005 to Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transportation Security, Department of Homeland Security, Washington, DC 20528; telephone 202-282-8431; facsimile 202-282-8504.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Monica Frazier, Office of the Assistant Secretary for Border and Transporta-

tion Security, Department of Homeland Security, Washington, DC 20528; telephone 202-282-8431; facsimile 202-282-8504, as soon as possible.

Draft Agenda: The COAC is expected to pursue the following agenda, which may be modified prior to the meeting:

1. MTSA Subcommittee
2. Security Subcommittee
 - a. Advance Cargo Information
 - b. WCO Security
 - c. C-TPAT Process Review
3. Automation Issues
 - a. ACE funding and development schedule
 - b. ACS downtime
4. International Trade Data System (ITDS)
5. Creation of Infrastructure Subcommittee
6. Bioterrorism Act
7. Focused Assessment Program

Membership: The twenty members for the ninth term of COAC are:

Anthony Barone, Pfizer
Sandra M. Fallgatter, JC Penny Purchasing Corp.
Jonathan Gold, Retail Industry Leaders Assn.
D. Scott Johnson, Gap, Inc.
Chris Koch, World Shipping Council
Marian Ladner, Strasburger and Price
Bruce Leeds, Boeing
Mary Jo Muoio, Barthco International, Inc.
Karen Phillips, Canadian National
Peggy Rutledge, Hapag-Lloyd Container Line
Norman Schenk, United Parcel Service
Lisa Schimmelpfenning, Wal-Mart Stores
Robert Schueler, Jr., Delphi Corporation
Kevin M. Smith, General Motors Corp.
Curtis Spencer, IMS Worldwide
Katherine M. Terricciano, Philips Electronics N. America
Thomas G. Travis, Sandler, Travis & Rosenberg
Henry White, Institute of International Container Lessors
J Michael Zachary, Port of Tacoma
Federico Zúñiga, National Customs Brokers and Forwarders
Association of America

C. STEWART VERDERY, JR.,
*Assistant Secretary for Border and
Transportation Security Policy and Planning.*

Dated: January 26, 2005

[Published in the Federal Register, January 31, 2005 (70 FR 4880)]

**Automated Commercial Environment (ACE):
Elimination of C-TPAT Requirement to Establish ACE
Importer and Broker Accounts**

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

ACTION: General notice.

SUMMARY: This notice announces a change to the application requirements when applying to become an Importer or Broker Account so as to access the Automated Commercial Environment (ACE) Secure Data Portal ("ACE Portal") or to participate in any ACE test. Specifically, applicants seeking to establish importer or broker accounts so as to access the ACE Portal, or to participate in any ACE test, are no longer required to provide a statement certifying participation in the Customs Trade Partnership Against Terrorism (C-TPAT). Participation in C-TPAT has never been a requirement to establish a carrier account.

EFFECTIVE DATES: The elimination of the C-TPAT requirement to establish an account or participate in any ACE test is effective immediately.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Maricich via email at Michael.Maricich@dhs.gov, or by telephone at (703) 668-2406.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2002, CBP published a General Notice in the **Federal Register** (67 FR 21800) announcing a plan to conduct a National Customs Automation Program (NCAP) test of the first phase of the Automated Commercial Environment. In this notice, CBP stated that it planned to select approximately forty importer accounts from the list of qualified applicants for the initial deployment of this test. The notice also stated that additional participants may be selected throughout the duration of this test. In order to be considered as one of the initial participants, importers' applications had to be received by CBP by June 1, 2002. Applications had to include the importer name, a unique importer number, a statement certifying participation in C-TPAT, and a statement certifying the capability to connect to the Internet.

On June 18, 2002, CBP extended the application period for those desiring to be one of the initial importer participants by publishing a second General Notice in the **Federal Register** (67 FR 41572). That notice emphasized that applications to be an initial participant had

to be submitted to CBP prior to August 1, 2002. Applications would be accepted after that date, but parties who so applied would be placed on a waiting list and considered for participation pending expansion of the technology.

On February 4, 2004, CBP published a third General Notice in the **Federal Register** (69 FR 5362) announcing the next step toward the full electronic processing of commercial importations in ACE, with a focus on identifying authorized importers and brokers to participate in the test to implement the Periodic Monthly Statement Process. The Notice stated that participants in this test would benefit by having access to operational data through the ACE Portal, enjoying the capability of being able to interact electronically with CBP, and making payments of duties and fees on a periodic monthly basis. Customs brokers, in order to apply, were required to provide names of the initial forty-one importers participating in the test by whom they had been or will have been designated as the authorized broker. In order to establish an ACE Broker Account, a broker was further required to file an application for participation which was to include the broker name, unique identification number, filer code, statement certifying participation in C-TPAT, statement certifying the capability of connecting to the Internet, statement certifying capability of making periodic payment via the Automated Clearing House (ACH) Credit or ACH Debit, and a statement certifying capability of filing entry/entry summary via Automated Broker Interface (ABI).

Also on February 4, 2004, CBP published a General Notice in the **Federal Register** (69 FR 5360) which described the application process to be followed in order to establish a truck carrier account so as to be eligible to participate in the electronic truck manifest functionality. C-TPAT participation is not required in order to establish a truck carrier account.

On September 8, 2004, CBP published a General Notice in the **Federal Register** (69 FR 54302), reminding the public that importers and their designated brokers may still apply to establish accounts so as to participate in the Periodic Monthly Statement Process. The Notice again invited customs brokers to participate in the ACE Portal test generally.

C-TPAT Participation No Longer Required

In order to encourage maximum participation in ACE and make benefits such as periodic monthly payment widely available, the application process to establish an importer or broker account or to participate in any ACE test will no longer require that a statement certifying C-TPAT participation be provided. It is important to note that this in no way indicates that the support of CBP management for the C-TPAT program has diminished. C-TPAT participants will

continue to realize specific benefits such as reduced examinations. Removal of the C-TPAT requirement for participation in ACE is intended to increase the usage of ACE so as to further streamline the commercial importation process, which will benefit both the importing community and CBP.

Dated: January 27, 2005

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

[Published in the Federal Register, February 1, 2005 (70 FR 5199)]

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

Washington, DC, February 2, 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.

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

**MODIFICATION OF RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO CLASSIFICATION OF
FRUITS IN ACETIC ACID**

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

ACTION: Notice of modification of ruling letter and revocation of treatment relating to the classification of a mixture of fruits and edible plant parts in acetic acid.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying a ruling letter pertaining to the tariff classification of a mixture of fruits and edible plant parts in acetic acid and revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed modification was published in the Customs Bulletin of December 15, 2004, Vol. 38, No. 51. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after April 17, 2005.

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

SUPPLEMENTARY INFORMATION:**Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on December 15, 2004, in the Customs Bulletin, Volume 38, Number 51, proposing to modify NY J87437, dated October 27, 2003, pertaining to the tariff classification of a mixture of fruits and edible plant parts in acetic acid under the Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in reply to the notice.

In NY J87437, dated October 27, 2003, the classification of a product commonly referred to as a mixture of fruits and edible plant parts in acetic acid was determined to be in heading 2001.90.3800, HTSUS, which provides for other vegetables prepared or preserved by vinegar or acetic acid. Since the issuance of that ruling, CBP has had a chance to review the classification of this merchandise and has determined that the classification is in error. None of the articles contained in the product are vegetables. Cranberries and apricots are fruits, and rosemary is an herb. Fruits and other edible parts of plants prepared or preserved by vinegar or acetic acid are classified in subheading 2001.90.60, HTSUS.

As stated in the proposal notice, this modification will cover any rulings on this merchandise which may exist but have not been spe-

cifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the notice period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY J87437, and revoking 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) 967015 (*see* "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: January 25, 2005

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

Attachment

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

HQ 967015
January 25, 2005
CLA-2 RR:CR:GC 967015ptl
Category: Classification
TARIFF NO.: 2001.90.60

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

RE: Fruit and Herbs Preserved in Acetic Acid; Modification of NY J87437

DEAR MR. GAT:

On October 27, 2003, the National Commodity Specialist Division of Customs and Border Protection (CBP) in New York, issued ruling J87437 which contained the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of two articles. The articles were identified using your product item number. According to NY J87437, Item # OV-204296A contained strawberries and rosemary in canola oil and was classified in subheading 2103.90.8000, HTSUS, which provides for mixed condiments and mixed seasonings . . . other. The other article, Item # OV-204296B contains cranberries, rosemary, and apricots in a 4.96 percent acetic acid liquid. That article was classified in subheading 2001.90.3800, HTSUS, which provides for vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid . . . other . . . vegetables . . . other. Since NY J87437 was issued, CBP has reviewed the classification of Item # OV-204296B and determined that it is incorrect for the reasons stated below. The classification of the other article classified in NY J87437, OV-204296A, is not affected by this letter.

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 J87437 was published on December 15, 2004, in the Customs Bulletin, Volume 38, Number 51. No comments were received in response to that notice.

FACTS:

You have described Item # OV-204296B as being a 500 ml bottle containing cranberries, rosemary, and apricots in a 4.96 percent acetic acid liquid. CBP Laboratory Report NY20031265, dated September 26, 2003, reports that the article contains 4.96 percent acetic acid by weight. Cranberries and apricots are fruits. Rosemary is an herb.

ISSUE:

What is the classification of fruits and an herb prepared or preserved in a solution that is 4.96 percent acetic acid by weight?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the head-

ings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

The HTSUS subheadings under consideration are as follows:

2001 Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid:

* * *

2001.90 Other:

Other:

Vegetables:

* * *

2001.90.3800 Other

2001.90.6000 Other

The CBP Laboratory analysis performed on the product indicates that it consists of ingredients that have been prepared or preserved by acetic acid. Therefore, the product is a good of heading 2001, HTSUS. The ingredients that have been prepared or preserved by the acetic acid are cranberries and apricots. These are fruits, products of chapter 8. The additional ingredient, rosemary, is an herb, an edible plant which would, if alone, be classified in chapter 12. Because none of the ingredients of the product are vegetables, the product itself cannot be classified in a subheading which provides for vegetables. Instead, the product is classified in the residual subheading 2001.90.60, HTSUS, which provides for other products.

HOLDING:

The article in NY J87437, identified as Item # OV-204296B containing cranberries, apricots and rosemary, in a 4.96 percent acid liquid is classified in subheading 2001.90.60, HTSUS, which provides for: Vegetables, fruit, nuts and other edible parts of plants, prepared or preserved by vinegar or acetic acid, other, other, other.

EFFECT ON OTHER RULINGS:

NY J87437, dated October 27, 2003, is modified in accordance with this decision. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

**REVOCAION AND MODIFICATION OF RULING LETTERS
AND REVOCATION OF TREATMENT RELATING TO
TARIFF CLASSIFICATION OF CERTAIN EXTRUDED
POLYETHYLENE OR POLYPROPYLENE MESH**

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking three ruling letters and modifying one ruling letter, each relating to the tariff classification of extruded polyethylene or polypropylene mesh under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on December 1, 2004, in Volume 38, 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 April 17, 2005.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Textiles Branch at (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 revoke three ruling letters and modify one ruling letter, each pertaining to the tariff classification of extruded polyethylene or polypropylene mesh was published in the December 1, 2004, CUSTOMS BULLETIN, Volume 38, Number 49. 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 notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY C84049, CBP ruled that extruded polyethylene mesh was classified in subheading 3920.10.0000, HTSUSA, which provides for "other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials: of polymers of ethylene." In NY G87431, CBP ruled that extruded polyethylene plastic was also classified in subheading 3920.10.0000, HTSUSA. Since the issuance of those rulings, CBP has reviewed the classification of these items and has determined that the cited rulings are in error. We have determined that the articles are properly classified in subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other, Other."

In NY H88635, CBP classified 100% polyethylene open-work warp knit fabric and extruded polyethylene mesh. CBP ruled that the extruded polyethylene mesh was classified in subheading 3920.10.0000, HTSUSA. With respect to the extruded polyethylene

mesh, CBP has determined that it is properly classified in subheading 3926.90.9880, HTSUSA, which provides for "Other articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other, Other."

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY C84049, NY G87431, NY D80029 and modifying NY H88635 and any other ruling not specifically identified, to reflect the proper classification of extruded polyethylene or polypropylene mesh according to the analysis contained in Headquarters Ruling Letters (HQ) 967346, HQ 967347, HQ 967348 and HQ 967349 as set forth as Attachments A through D, respectively, 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 25, 2005

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

Attachments

[ATTACHMENT A]

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

HQ 967346
January 25, 2005
CLA-2 RR:CR:TE 967346 KSH
TARIFF NO.: 3926.90.9880

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

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

DEAR MS. ALDINGER:

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

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 C84049 was published on December 1, 2004, in Vol. 38, Number 49, of the CUSTOMS BULLETIN. CBP received no comments.

FACTS:

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

ISSUE:

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

LAW AND ANALYSIS:

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

the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

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

Note 10 to Chapter 39, HTSUS, provides:

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

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

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

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

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

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

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

Similarly, the World Customs Organization’s (WCO) Harmonized System Committee (HSC) classified substantially similar merchandise in subheading 3926.90, HTSUSA. See Annex L/5 to Doc. NC0590B2 (HSC/29/May

2002). The HSC did not consider the geotextile material, with its large open weave, to be a "sheet." See Annex G/11 to Doc. NC0510E2 (HSC/28/Nov. 2001).

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

HOLDING:

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

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

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

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.



[ATTACHMENT B]

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

HQ 967347
January 25, 2005
CLA-2 RR:CR:TE 967347 KSH
TARIFF NO.: 3926.90.9880

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

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

DEAR MR. FODOR:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) G87431, issued to you on behalf of your client Intermaas Nets S.A., on March 20, 2001, concerning the classification under the Harmonized Tariff Schedule of the

United States Annotated (HTSUSA) of extruded polyethylene plastic. The article was classified in subheading 3920.10.0000, HTSUSA, which provides for “other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials: of polymers of ethylene.” We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY G87431.

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 G87431 was published on December 1, 2004, in Vol. 38, Number 49, of the CUSTOMS BULLETIN. CBP received no comments.

FACTS:

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

ISSUE:

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

LAW AND ANALYSIS:

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

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

Note 10 to Chapter 39, HTSUS, provides:

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

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

Webster’s Third New International Dictionary (Webster’s) (1986) defines “sheeting,” in relevant part, as “1: material in the form of sheets or suitable

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

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

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

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

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

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

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

HOLDING:

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

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

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

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.

[ATTACHMENT C]

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

HQ 967348
January 25, 2005
CLA-2 RR:CR:TE 967348 KSH
TARIFF NO.: 3926.90.9880

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

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

DEAR MR. MATTSON:

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

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 H88653 was published on December 1, 2004, in Vol. 38, Number 49, of the CUSTOMS BULLETIN. CBP received no comments.

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

FACTS:

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

ISSUE:

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

LAW AND ANALYSIS:

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

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

Note 10 to Chapter 39, HTSUS, provides:

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

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

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

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

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

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

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

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

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

HOLDING:

NY H88635, dated February 21, 2002, is here by modified to reflect the proper classification of the “Black Extruded Netting”.

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

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

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.

[ATTACHMENT D]

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

HQ 967349
January 25, 2005
CLA-2 RR:CR:TE 967349 KSH
TARIFF NO.: 3926.90.9880

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

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

DEAR MR. MURRAY:

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

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 D80028 was published on December 1, 2004, in Vol. 38, Number 49, of the CUSTOMS BULLETIN. CBP received no comments.

FACTS:

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

ISSUE:

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

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity De-

scription and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

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

Note 10 to Chapter 39, HTSUS, provides:

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

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

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

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

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

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

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

Similarly, the World Customs Organization’s (WCO) Harmonized System Committee (HSC) classified substantially similar merchandise in subhead-

ing 3926.90, HTSUSA. See Annex L/5 to Doc. NC0590B2 (HSC/29/May 2002). The HSC did not consider the geotextile material, with its large open weave, to be a “sheet.” See Annex G/11 to Doc. NC0510E2 (HSC/28/Nov. 2001).

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

HOLDING:

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

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

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

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.

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF A RADIO ALARM CLOCK INCORPORATING A CD PLAYER

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

ACTION: Notice of proposed revocation of ruling letter, and revocation of treatment relating to tariff classification of a radio alarm clock incorporating a CD player.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking a ruling letter pertaining to the tariff classification of a radio alarm clock incorporating a CD player under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the pro-

posed action was published in the *Customs Bulletin*, Volume 38, Number 51, on December 15, 2004. No comments were received in response to the notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after April 17, 2005.

FOR FURTHER INFORMATION CONTACT: Michelle Garcia, General Classification Branch, (202) 572-8745.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the *Customs Bulletin*, Volume 38, Number 51, on December 15, 2004, proposing to revoke NY J83164, which involved the classification of a radio alarm clock incorporating a CD player. No comments were received in response to the notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP is revoking any treatment pre-

viously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this action.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY J83164, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 967274, attached. 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 28, 2005

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

Attachment

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

HQ 967274
January 28, 2005
CLA-2 RR:CR:GC 967274 MG
CATEGORY: Classification
TARIFF NO.: 8527.31.6040

MS. AASHA DESLOGE-KURR
BEST BUY
7601 Penn Avenue S, Bldg. D4
Richfield, MN 55423

RE: NY J83164 revoked; CD alarm clock radios

DEAR MS. DESLOGE-KURR:

This is in response to an internal request for reconsideration of NY J83164, dated April 10, 2003, a ruling issued to you, on the classification of two models of radio alarm clock, each incorporating a compact disc (CD) player, under the Harmonized Tariff Schedule of the United States

(HTSUS). NY J83164 classified the merchandise under subheading 8527.39.00, HTSUS. However, in researching a related issue, Customs and Border Protection (CBP) determined that NY J83164 should be revoked. This ruling letter sets forth the correct classification of the subject merchandise.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY J82455 was published on November 17, 2004, in the Customs Bulletin, Volume 38, Number 51. No comments were received in response to that notice.

FACTS:

NY J83164 described the merchandise as follows:

The two items in question are denoted as the CD Clock Radio, model MCR220BK and the CD AM/FM stereo Clock Radio, model CR 4955.

Model MCR220BK is an AM/FM radiobroadcast unit with a clock, a CD player, without recording capability, a dual alarm and a LCD display. The clock radio is not capable of operating without an external source of power.

Model CR4955 is an AM/FM radiobroadcast unit with a clock, a CD player, without recording capability, a sleep timer, an LED display, dual alarm, 20 memory programs, and an optional wake feature of either the radio, a buzzer or the CD player. It employs a 9-volt battery as a backup only for the clock. This clock radio cannot operate without an external source of power.

ISSUE:

Whether the terms of subheading 8527.31, HTSUS, provide for a radio incorporating both a clock and CD player, such as the merchandise at issue, or whether such a device must be classified under subheading 8527.39.00, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs.

GRI 6 states that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

The HTSUS provisions under consideration are as follows:

8527	Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with a sound recording or reproducing apparatus or a clock:
------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy:

8527.31 Combined with sound recording or reproducing apparatus:

Other:

8527.31.60 Other

* * * * *

8527.39.00 Other

Heading 8527, HTSUS, applies to reception apparatus for radiobroadcasting, whether or not combined with sound recording or reproducing apparatus or a clock and, therefore, applies to the instant merchandise, a radio alarm clock incorporating a CD player. Because two competing subheadings within heading 8527, HTSUS, are at issue, GRI 3(a) is applied through GRI 6. GRI 3(a) states that when, by application of rule 2(b) or for any other reason, goods are *prima facie* classifiable under two or more subheadings, the subheading which provides the most specific description shall be preferred to a subheading providing a more general description. In *Orlando Food Corp. v. US*, 140 F.3d 1437, 1441 (Fed. Cir. 1998) (quoting, *United States v. Siemens Am., Inc.*, 653 F.2d 471, 478 (CCPA 1981)), the court addressed GRI 3(a), holding that under the rule of relative specificity, the subheading with requirements more difficult to satisfy will prevail and be applied over a more general subheading because it describes the article with the greatest degree of accuracy and certainty. Additionally, with regard to classification when a “basket” provision is being considered, classification therein is appropriate “only when there is no tariff category that covers the merchandise more specifically.” *See Apex Universal, Inc. v. United States*, 22 CIT 465 (1998).

CBP notes that subheading 8527.31, HTSUS, is a more specific provision than subheading 8527.39, HTSUS, providing as it does for merchandise “[c]ombined with sound recording or reproducing apparatus,” as opposed to “[o]ther.” Within subheading 8527.31, HTSUS, CBP has previously classified a clock radio incorporating a cassette player and telephone, specifically under subheading 8527.31.40, HTSUS. *See* HQ 954412, dated August 18, 1993 and NY DD 885222, dated May 12, 1993. Thus, notwithstanding the telephone incorporated into that merchandise, a radio combined with both a sound reproducing device and a clock was classified within subheading 8527.31, HTSUS. These rulings support the conclusion that, because the word “clock” is specifically mentioned in the text to heading 8527, HTSUS, it is not necessary that the word “clock” be specifically mentioned again within subheading 8527.31, HTSUS, in order to classify an item incorporating a clock therein.

The merchandise at issue is similar to that classified in HQ 954412 and NY DD 885222, with respect to both being a radio combined with a sound reproducing device, in this case a CD player, and a clock. As a result, subheading 8527.31, HTSUS, the more specific provision, shall apply. Within that subheading, both models of CD alarm clock radio are classified under 8527.31.60, HTSUS.

HOLDING:

The AM/FM clock radios incorporating CD players, models MCR220BK and CR4955, are classified under subheading 8527.31.6040, Harmonized Tariff Schedule of the United States Annotated, as "Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock: Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy: Combined with sound recording or reproducing apparatus: Other." The column one, general rate of duty is *Free*.

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

EFFECT ON OTHER RULINGS:

NY J83164 is REVOKED. In accordance with 19 U.S.C. 1625(c), 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 RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
TENNIS BALLS**

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

ACTION: Notice of revocation of ruling letter and revocation of treatment relating to tariff classification of tennis balls.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is revoking a ruling letter pertaining to the tariff classification of tennis balls under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Volume 38, Number 47, on November 17, 2004. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 17, 2005.

FOR FURTHER INFORMATION CONTACT Michelle Garcia,
General Classification Branch, (202) 572-8745.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the *Customs Bulletin*, Volume 38, Number 47, on November 17, 2004, proposing to revoke NY J82455, which involved the classification of tennis balls. No comments were received in response to the notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised

CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this action.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY J82455, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 967293, attached. 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 28, 2005

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

Attachment

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

HQ 967293
January 28, 2005
CLA-2 RR:CR:GC 967293 MG
CATEGORY: Classification
TARIFF NO.: 9506.61.0000

MS. CARI GREGO
DOLLAR TREE STORES, INC.
500 Volvo Parkway
Chesapeake, VA 23320

RE: Revocation of J82455; tennis balls

DEAR MS. GREGO:

This is in response to an internal request for the reconsideration of NY J82455, dated April 21, 2003, on three multicolored balls under the Harmonized Tariff Schedule of the United States (HTSUS). This ruling letter sets forth the correct classification of the subject merchandise.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C.1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY J82455 was published on November 17, 2004, in the Customs Bulletin, Volume 38, Number 47. No comments were received in response to that notice.

FACTS:

In describing the subject merchandise, NY J82455 provided as follows:

The submitted sample is identified as item number SKU 132044, pet toys. The sample consists of three multicolored tennis balls that are decorated with paw prints. In a telephone conversation with this office you stated that the pet toy tennis balls are made of natural rubber.

ISSUE:

Whether the three multicolored balls are dog toys under heading 4016, HTSUS, or tennis balls under heading 9506, HTSUS?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs.

Additional Rule of Interpretation (ARI) 1(a) states that in the absence of special language or context which otherwise requires, a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. The ENs, although neither dispositive or legally binding, facilitate classification by providing a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

4016	Other articles of vulcanized rubber other than hard rubber:
	Other:
4016.99	Other:
4016.99.20	Toys for pets
*	* * * *
9506	Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof:
	Balls, other than golf balls and table-tennis balls:
9506.61.00	Lawn-tennis balls

In NY J82455, CBP classified three multicolored balls with paw prints on them under subheading 4016.99.20, HTSUS, which provides for "Other articles of vulcanized rubber, other than hard rubber: Other: Toys for pets." In that ruling, CBP held that the merchandise, because they are intended for use by pets, cannot be considered equipment for use by human

beings in physical activities designed to train, develop or condition the body and improve physical fitness. As a result, they were not classified under heading 9506, HTSUS.

GRI 3(a) states, in pertinent part, that when goods are *prima facie* classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. We note initially that heading 4016, HTSUS, is a basket provision and applies only if the merchandise is not more specifically described elsewhere. Therefore, inasmuch as the merchandise at issue is an article of rubber that is covered by the heading text of 4016, HTSUS, we must first examine any other provision, which, if applicable, would take precedence for purposes of classification.

Heading 9506, HTSUS, applies to articles and equipment for general physical exercise, such as for sports and outdoor games. EN 95.06 states in pertinent part:

This heading covers:

...

(B) **Requisites for other sports and outdoor games (other than toys presented in sets, or separately, of heading 95.03), e.g.:**

...

(6) Balls, other than golf balls and table-tennis balls, such as **tennis balls** . . . [Emphasis added].

Heading 9506, HTSUS, is a principal use provision and, therefore, subject to Additional U.S. Rule of Interpretation 1(a), HTSUS. In *Primal Lite v. United States*, 15 F. Supp. 2d 915 (CIT 1998); *aff'd* 182 F. 3d 1362 (CAFC 1999), the Court of International Trade addressed ARI 1(a), providing that the purpose of principal use provisions in the HTSUS is to classify particular merchandise according to the ordinary use of such merchandise, even though particular imported goods may be put to some atypical use. Therefore, classification under the heading is controlled by the principal use in the United States of goods of that class or kind to which the imported goods belong at or immediately prior to the date of the importation. *Lenox v. Coll. v. United States*, 20 CIT, Slip Op. 96-30 (February 2, 1996). It is equally important to note that we are not examining the actual use of the instant merchandise in making our determination, but rather examining whether the pertinent characteristics of the instant merchandise are substantially similar to those of the typical merchandise falling within the class.

To be classified under heading 9506, HTSUS, the ball at issue would have to be part of the class or kind of ball that is considered a "tennis ball." In determining the class or kind of goods to which an article belongs, CBP may consider a variety of factors including: (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchaser; (3) the channels of trade in which the merchandise moves; (4) the environment of sale (accompanying accessories, manner of advertisement and display); and (5) the usage of the merchandise. *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), *cert. denied*, 429 U.S. 979.

Regarding the instant merchandise, the balls are visually identical to recognized tennis balls in their shape, size, and the felt material used to cover them. Other than the fact that the balls have paw prints on the surface of the felt material, there is no obvious indication that they will be marketed

for use by pets and they are, in fact, dissimilar to any type of recognized pet toy. In addition, regardless of the fact that the balls may ultimately be used as pet toys, our examination of the available information leads us to conclude that, upon importation, they are of the class or kind of ball that is considered a tennis ball. We additionally note that in NY J82455, CBP described the merchandise as "tennis balls," but did not classify them under heading 9506, HTSUS, only because they were intended for use by animals. As previously stated, their ultimate use by pets is not determinative for purposes of classification.

Finally, CBP has previously classified substantially similar merchandise under heading 9506, HTSUS. In NY J89264, dated September 25, 2003, CBP determined that the Fetch Tote™ was a "tennis ball" and therefore should be classified under subheading 9506.61.00, HTSUS. The Fetch Tote™ consisted of two components, a ball and accompanying belt pouch. The ball was non-pressurized and was identical to a tennis ball due to its size, shape; and the fact that it was covered in blue and white felt of the same configuration as recognized tennis balls; the ball also had the word "Chuckit!" printed on it. In addition, the ball was produced by a tennis ball manufacturer. Because that ball was seemingly identical to recognized tennis balls in both appearance and construction, and therefore dissimilar to any type of pet toy, CBP determined that classification was proper under heading 9506, HTSUS. CBP notes that the merchandise at issue is seemingly identical to the Fetch Tote™.

In view of the foregoing, the merchandise at issue is classified under the more specific heading, 9506, HTSUS, and more specifically under subheading 9506.61.00, HTSUS, as a tennis ball.

HOLDING:

The ball is classified under subheading 9506.61.0000, Harmonized Tariff Schedule of the United States Annotated, as, "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in this chapter; swimming pools and wading pools; parts and accessories thereof: Balls, other than golf balls and table-tennis balls: Lawn-tennis balls." The general, column one rate of duty is *Free*.

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

EFFECT ON OTHER RULINGS:

NY J82455, dated April 21, 2003 is REVOKED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

**MODIFICATION OF TWO RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF PREPARED SLIDES**

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

ACTION: Notice of modification of two ruling letters, and revocation of treatment relating to tariff classification of prepared slides.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that CBP is modifying two ruling letters pertaining to the tariff classification of prepared slides under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP also is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Volume 38, Number 47, on November 17, 2004. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 17, 2005.

FOR FURTHER INFORMATION CONTACT: Michelle Garcia, General Classification Branch, (202) 572–8745.

SUPPLEMENTARY INFORMATION:

Background

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the Customs Bulletin, Volume 38, Number 47, on November 17, 2004, proposing to modify NY J81103 and NY D87557, two rulings pertaining to the classification of prepared slides. No comments were received in response to the notice.

As stated in the proposed notice, this modification will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advise 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, as amended (19 U.S.C. 1625(c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised CBP during the comment period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this action.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY J81103 and NY D87557, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 967296 (Attachment A) and HQ 967297(Attachment B). 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), these rulings will become effective 60 days after publication in the Customs Bulletin.

DATED: January 28, 2005

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

Attachments

[ATTACHMENT A]

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

HQ 967296

January 28, 2005

CLA-2 RR:CR:GC 967296 MG

CATEGORY: Classification

TARIFF NO.: 9023.00.0000

MR. DENNIS AHERN
BOWEN HILL, LTD.
2032 Nottingham Way
Hamilton NJ, 98619

RE: Prepared Slides; NY J81103, modified

DEAR MR. AHERN:

This is in response to an internal request for reconsideration of NY J81103, dated February 28, 2003, on the classification of prepared slides under the Harmonized Tariff Schedule of the United States (HTSUS). NY J81103 classified prepared slides under subheadings 5402.41.90, HTSUS, and 9705.00.00, HTSUS. However, in researching a related issue, Customs and Border Protection (CBP) determined that NY J81103 should be modified only with respect to its classification of prepared slides. This ruling letter sets forth the correct classification of the subject merchandise.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY J81103 and NY D87557, was published on November 17, 2004, in the Customs Bulletin, Volume 38, Number 47. No comments were received in response to that notice.

FACTS:

The merchandise at issue are two prepared slides for microscopic study. More specifically, one of the slides contains a textile sample and the remaining slide contains a specimen of a grasshopper; both are included as part of the Die Cast Microscope/Telescope Set. Although termed a "set" by the importer, NY J81103 determined that the merchandise did not meet the criteria to qualify as a GRI 3(b) set. As such, all of the individual articles, including the prepared slides, were separately classified.

The one prepared slide with a textile sample was classified under subheading 5402.41.90, HTSUS as "Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex: Other yarn, single, untwisted or with a twist not exceeding 50 turns/m: Of nylon or other polyamides: Other."

The one prepared slide containing a specimen of a grasshopper was classified under subheading 9705.00.00, HTSUS, as "Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest."

ISSUE:

Whether the prepared slides for microscopic study are classified as synthetic filament yarn under subheading 5402.41.90, HTSUS, or as collections

and collectors' pieces of zoological interest under subheading 9705.00.00, HTSUS, or as instruments, apparatus and models, designed for educational purposes, under subheading 9023.00.00, HTSUS?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. The ENs, although neither dispositive nor legally binding, facilitate classification by providing a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

5402	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex:
	Other yarn, single, untwisted or with a twist not exceeding 50 turns/m:
5402.41	Of nylon or other polyamides:
5402.41.90	Other
*	* * * * *
9023.00.00	Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses, and parts and accessories thereof
*	* * * * *
9705.00.00	Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest

Subheading 9705.00.00, HTSUS, applies to collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest. In addition, EN 97.05 states, in pertinent part, that:

These articles are very often of little intrinsic value but derive their interest from their rarity, their grouping or their presentation. The heading includes:

(A) **Collections and collectors' pieces of zoological, botanical, mineralogical or anatomical interest, such as:**

- (1) Dead animals of any species, preserved dry or in liquid; stuffed animals for collections.
- (2) Blown or sucked eggs; insects in boxes, frames, etc. (**other than** mounted articles constituting imitation jewelry or trin-

kets); empty shells, **other than** those of a kind suitable for industrial use.

- (3) Seeds or plants, dried or preserved in liquid; herbariums.
- (4) Specimens of minerals (**not being** precious or semi-precious stones falling in **Chapter 71**); specimens of petrification.
- (5) Osteological specimens (skeletons, skulls, bones).
- (6) Anatomical and pathological specimens

Regarding the prepared slide containing a grasshopper sample and classified under subheading 9705.00.00, HTSUS, there is no information that would indicate it constitutes a rare sample that would be of any interest in a collection and to a collector, as required by the heading text. Rather, it appears to contain a microscopic sample of no distinction, on the same type of slide that is typically included with a microscope. Although we note that EN 97.05 (A)(2) refers specifically to insects, we further note that it indicates the insects are preserved in whole as opposed to the mere preservation of a microscopic sample. In addition, CBP notes that prior rulings classifying items under subheading 9705.00.00, HTSUS, invariably pertain to rare examples of merchandise, or merchandise that would appropriately be part of a collection, and therefore important to a collector for purposes of display. *See* NY J89338, dated October 15, 2003 (reproductions of historically significant tiles found in famous churches, museums and private villas throughout Italy), HQ 966030, dated January 28, 2003 (ancient Egyptian figurine resembling a miniature sarcophagus with hieroglyphic writing), HQ 962234, dated July 17, 2000 (various collectible automobiles or racing cars), HQ 960986, dated February 24, 1999 (rock and roll memorabilia, including gold and platinum albums, collectible clothing, instruments, photos, lobby cards, pictures, toys and autographs, all of which are associated with various entertainers), HQ 961279, dated November 5, 1998 (collection of approximately 40 rare automobiles produced from the late 1920's through the 1950's, which may be shown at exhibitions for rare automobiles, or in museums), HQ 957664, dated March 13, 1996 (various mounted animals, mounted fish and various animal racks and traps), HQ 952687, dated April 30, 1993 (mounted game fish preserved by a taxidermist), and HQ 083869, dated June 14, 1989 (glass display case containing butterflies of various types, sizes and colors; glass display case containing South American spiders). Unlike the products in these rulings, the merchandise at issue cannot be displayed in such a fashion. In view of the foregoing, we find that the prepared slide containing a sample of a grasshopper is not described under subheading 9705.00.00, HTSUS.

Heading 5402, HTSUS, provides for synthetic filament yarn. *See* HQ 966892, dated January 26, 2004 (monofilament nylon sutures classified under heading 5402, HTSUS), HQ 966676, dated December 1, 2003 (monofilament nylon sutures classified under heading 5402, HTSUS), HQ 562298, dated February 21, 2002 (nylon filament yarn for the production of apparel articles classified under heading 5402, HTSUS). The merchandise at issue is a slide for microscopic study that happens to contain a small sample of synthetic filament yarn. Because heading 5402, HTSUS, does not apply to slides for microscopic study, the merchandise at issue, pursuant to GRI 1, is precluded from classification therein.

Subheading 9023.00.00, HTSUS, applies to models designed for demonstrational purposes, for example in educational settings, which are unsuitable for other uses. In addition, EN 90.23 provides, in pertinent part, that:

This heading covers a wide range of instruments, apparatus and models designed for demonstrational purposes (e.g., in schools, lecture rooms, exhibitions) and unsuitable for other uses.

Subject to this proviso, the heading includes:

...

(5) Show-cases and exhibit panels, etc., displaying samples of raw materials (textile fibres, woods, etc.), or showing the various stages of manufacture or processing of a product (for instruction in technical schools).

...

(7) **Prepared slides** for microscopic study [Emphasis added].

The prepared slides at issue are exclusively used for demonstrational purposes, most often in an educational setting. The slides must be used in concert with a microscope to be viewed in any detail, making it readily apparent that they are incapable of being put to another type of use. As a result, they are completely and accurately described by the text to subheading 9023.00.00, HTSUS. In addition, EN 90.23 specifically names prepared slides for microscopic study. In view of the foregoing, the prepared slides are classified under subheading 9023.00.00, HTSUS.

HOLDING:

Both the prepared slide containing textile materials and the prepared slide containing a sample of a grasshopper are classified under subheading 9023.00.0000, Harmonized Tariff Schedule of the United States Annotated, as "Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses, and parts and accessories thereof." The 2004 general, column one rate of duty is *Free*.

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

EFFECT ON OTHER RULINGS:

NY J81103, dated February 28, 2003 is MODIFIED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

[ATTACHMENT B]

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

HQ 967297

January 28, 2005

CLA-2 RR:CR:GC 967297 MG

CATEGORY: Classification

TARIFF NO.: 9023.00.0000

MS. STACEY L. KAPUSHY
TASCO SALES, INC.
2889 Commerce Parkway
Miramar, FL 33025

RE: Prepared Slides; NY D87557, modified

DEAR MS. KAPUSHY:

This is in response to an internal request for reconsideration of NY D87557, dated February 29, 1999, on the classification of a prepared slide under the Harmonized Tariff Schedule of the United States (HTSUS). NY D87557 classified a prepared slide under subheading 9705.00.00, HTSUS. However, in researching a related issue, Customs and Border Protection (CBP) determined that NY D87557 should be modified only with respect to its classification of the prepared slide. This ruling letter sets forth the correct classification of the subject merchandise.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY J81103 and NY D87557, was published on November 17, 2004, in the Customs Bulletin, Volume 38, Number 47. No comments were received in response to that notice.

FACTS:

The merchandise at issue is one prepared slide for microscopic study. More specifically, the slide contains an animal specimen and is included as part of The Kids' Collection, an assortment of instruments for use by children. NY D87557 determined that the assortment of merchandise did not meet the criteria to qualify as a GRI 3(b) set. As such, all of the individual articles, including the prepared slide, were separately classified. The prepared slide was classified under subheading 9705.00.00, HTSUS, as "Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest."

ISSUE:

Whether the prepared slide for microscopic study is classified as collections and collectors' pieces of zoological interest under subheading 9705.00.00, HTSUS, or as instruments, apparatus and models, designed for educational purposes, under subheading 9023.00.00, HTSUS?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall

be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs.

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System represent the official interpretation of the tariff at the international level. The ENs, although neither dispositive nor legally binding, facilitate classification by providing a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

9023.00.00 Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses, and parts and accessories thereof

* * * * *

9705.00.00 Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest

Subheading 9705.00.00, HTSUS, applies to collections and collectors' pieces of zoological, botanical, mineralogical, anatomical, historical, archeological, paleontological, ethnographic or numismatic interest. In addition, EN 97.05 states, in pertinent part, that:

These articles are very often of little intrinsic value but derive their interest from their rarity, their grouping or their presentation. The heading includes:

- (A) **Collections and collectors' pieces of zoological, botanical, mineralogical or anatomical interest**, such as:
- (1) Dead animals of any species, preserved dry or in liquid; stuffed animals for collections.
 - (2) Blown or sucked eggs; insects in boxes, frames, etc. (**other than** mounted articles constituting imitation jewelry or trinkets); empty shells, **other than** those of a kind suitable for industrial use.
 - (3) Seeds or plants, dried or preserved in liquid; herbariums.
 - (4) Specimens of minerals (**not being** precious or semi-precious stones falling in **Chapter 71**); specimens of petrification.
 - (5) Osteological specimens (skeletons, skulls, bones).
 - (6) Anatomical and pathological specimens

Regarding the prepared slide containing an animal specimen and classified under subheading 9705.00.00, HTSUS, there is no information that would indicate it constitutes a rare sample that would be of any interest in a collection and to a collector, as required by the heading text. Rather, it appears to contain a microscopic sample of no distinction, on the same type of slide that is typically included with a microscope. In addition, CBP notes that prior rulings classifying items in subheading 9705.00.00, HTSUS, invariably pertain to rare examples of merchandise, or merchandise that would appropriately be part of a collection, and therefore important to a col-

lector for purposes of display. *See* NY J89338, dated October 15, 2003 (reproductions of historically significant tiles found in famous churches, museums and private villas throughout Italy), HQ 966030, dated January 28, 2003 (ancient Egyptian figurine resembling a miniature sarcophagus with hieroglyphic writing), HQ 962234, dated July 17, 2000 (various collectible automobiles or racing cars), HQ 960986, dated February 24, 1999 (rock and roll memorabilia, including gold and platinum albums, collectible clothing, instruments, photos, lobby cards, pictures, toys and autographs, all of which are associated with various entertainers), HQ 961279, dated November 5, 1998 (collection of approximately 40 rare automobiles produced from the late 1920's through the 1950's, which may be shown at exhibitions for rare automobiles, or in museums), HQ 957664, dated March 13, 1996 (various mounted animals, mounted fish and various animal racks and traps), HQ 952687, dated April 30, 1993 (mounted game fish preserved by a taxidermist), and HQ 083869, dated June 14, 1989 (glass display case containing butterflies of various types, sizes and colors; glass display case containing South American spiders). Unlike the products in these rulings, the merchandise at issue cannot be displayed in such a fashion. In view of the foregoing, we find that the prepared slide containing an animal specimen is not described under subheading 9705.00.00, HTSUS.

Subheading 9023.00.00, HTSUS, applies to models designed for demonstrational purposes, for example in educational settings, which are unsuitable for other uses. In addition, EN 90.23 provides, in pertinent part, that:

This heading covers a wide range of instruments, apparatus and models designed for demonstrational purposes (e.g., in schools, lecture rooms, exhibitions) and unsuitable for other uses.

Subject to this proviso, the heading includes:

...
(7) **Prepared slides** for microscopic study [Emphasis added].

The prepared slide at issue is exclusively used for demonstrational purposes, most often in an educational setting. The slide must be used in concert with a microscope to be viewed in any detail, making it readily apparent that it is incapable of being put to another type of use; a microscope is one of the instruments included in The Kids' Collection. As a result, the prepared slide is completely and accurately described by the text to subheading 9023.00.00, HTSUS. In addition, EN 90.23 specifically names prepared slides for microscopic study. In view of the foregoing, the prepared slides are classified under subheading 9023.00.00, HTSUS.

HOLDING:

The prepared slide containing an animal specimen is classified under subheading 9023.00.0000, Harmonized Tariff Schedule of the United States Annotated, as "Instruments, apparatus and models, designed for demonstrational purposes (for example, in education or exhibitions), unsuitable for other uses, and parts and accessories thereof." The 2004 general, column one rate of duty is *Free*.

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

EFFECT ON OTHER RULINGS:

NY D87557, dated February 29, 1999 is MODIFIED. In accordance with 19 U.S.C. 1625(c), 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 TARIFF CLASSIFICATION OF A CERTAIN MEN'S UPPER BODY GARMENTS

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

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

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking one ruling letter relating to the tariff classification of certain men's upper body garments under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on December 1, 2004, in Volume 38, 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 April 17, 2005.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Textiles Branch at (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 revoke one ruling letter pertaining to the tariff classification of certain men's upper body garments was published in the December 1, 2004, CUSTOMS BULLETIN, Volume 38, Number 49. No comments were received.

As stated in the proposed notice, this revocation 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, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY K84208, dated March 18, 2004, CBP ruled that a men's upper body garment was classified in heading 6205, HTSUSA, as a men's man-made fiber shirt. Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error. We have determined that the article is properly classified in heading 6201, HTSUSA, as a garment similar to a windbreaker.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY K84208 and any other ruling not specifically identified, to reflect the proper classification of certain men's upper body garments according to the analysis contained in HQ 967188¹, 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 28, 2005

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

Attachment

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

HQ 967188
January 28, 2005
CLA-2 RR:CR:TE 967188 KSH
TARIFF NO.: 6201.93.3511

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

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

DEAR MR. SANDSTROM:

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

¹HQ 967188 has been modified since the publication of the proposed notice of revocation to incorporate earlier CBP rulings that support the position taken. No substantive changes have been made.

heading 6203: Anoraks (including ski jackets), windbreakers and similar articles (including padded, sleeveless jackets): Of man-made fibers: Other: Other: Other: Water resistant.” Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

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 K84208, dated March 18, 2004, was published in the *Customs Bulletin*, Volume 38, Number 49, on December 1, 2004. CBP received no comments during the notice and comment period which closed on December 31, 2004.

FACTS:

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

ISSUE:

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

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

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

In circumstances such as these, where the identity of a garment is ambiguous for classification purposes, reference to the Guidelines is appropriate. The Guidelines were developed and revised in accordance with the HTSUS to ensure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for

the administration of the Arrangement Regarding International Trade in Textiles. The Guidelines offer the following with regard to the classification of men's or boys' shirt-jackets:

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

* * *

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

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

* * *

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

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

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

The ENs for heading 6205 state in pertinent part:

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

The subject merchandise has tightening at the bottom and is constructed of woven nylon fabric typically used in windbreakers. These features and the oversized cut allowing the garment to be worn over other apparel cause the garment to have the character of a wind-jacket.¹ The subject merchandise is therefore precluded from classification as a shirt of heading 6205, HTSUS, pursuant to the EN.

The next issue is whether the garment at issue is classifiable as a windbreaker or similar article of heading 6201, HTSUS. All such decisions are somewhat subjective and must be made on a case-by-case basis considering the available facts. The Explanatory Notes (EN) to heading 6101, which apply *mutatis mutandis* to the articles of heading 6201, HTSUS, state: "This heading covers . . . garments for men or boys, characterised by the fact that they are generally worn over all other clothing for protection against the weather."

The upper body garment is constructed from a woven nylon fabric which is typically used in windbreakers. The subject merchandise will provide a degree of protection against the weather due to the woven nylon fabric used in the construction of the garment and the overall styling of the garment including a zipper that allows the stand-up collar to be zipped closed. See HQ 957628, dated February 28, 1995, and HQ 956982, dated November 22, 1994, classifying similar woven nylon garments as jackets, similar to windbreakers, in headings 6201 and 6202, HTSUS, respectively. Although the subject garment possesses short sleeves, the merchandise is similar to garments which have been classified as windbreakers or wind-cheaters and which are typically worn by golfers. See HQ 964181, dated April 4, 2001, classifying a short-sleeve pullover constructed of material typical of that used in windbreakers as a jacket, similar to a windbreaker, in heading 6201, HTSUS. As was noted in HQ 964181, shorter sleeves may be preferable to some golfers who want more flexibility in their swing and do not want to be hampered by long sleeves. The subject garment is much like the jackets worn by golfers or other athletes for warmth or for protection from light rain. Indeed the hang tag attached to the sample indicates that it is both wind and water resistant.

The hang tag also markets the upper body garment as a jacket and indicates that it has generous sizing. The side vent further allows the upper body garment to be worn over other upper body garments. A review of various internet retailer sites indicates that the subject garment is marketed and sold as a pullover jacket. A catalog description of the subject garment advertises it as a warmup garment with coordinating pants. Accordingly, the merchandise is classifiable as an article similar to a men's windbreaker under heading 6201, HTSUS.

¹We note, however, that a tightening at the bottom of the garment alone would not preclude classification as a shirt of heading 6205, HTSUS. See 957876, dated September 20, 1995, classifying a men's woven shirt with a rib knit waistband in heading 6205, HTSUS.

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

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

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

HOLDING:

NY K84208, dated March 18, 2004, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

If the men’s upper body garment, style 9058, passes the water resistance test specified in Chapter 62, U.S. Note 2, HTSUS, then the applicable HTS subheading for the garment will be 6201.93.3000, HTSUS, which provides for “Men’s or boys’ overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6203: Anoraks (including ski jackets), windbreakers and similar articles (including padded, sleeveless jackets): Of man-made fibers: Other: Other: Other: Water resistant.” The duty rate will be 7.1 percent *ad valorem*. The textile quota category is 634.

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

Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas” which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you

to the web site of the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

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

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO CLASSIFICATION OF A RETICULATED FOAM
FILTER RING

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

ACTION: Notice of revocation of a ruling letter and treatment relating to tariff classification of a reticulated foam filter ring.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection ("CBP") is revoking a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a reticulated foam filter ring and to revoke any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin* on December 15, 2004. No comments were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 17, 2005.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, General Classification Branch, (202) 572-8782.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize volun-

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of a reticulated foam filter ring. Although in this notice CBP is specifically referring to one ruling, NY K80327, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on December 15, 2004, in the *Customs Bulletin* Vol. 38, No. 51, proposing to revoke NY K80327, dated November 21, 2003. This ruling pertained to the tariff classification of a reticulated foam filter ring. No comments were received in response to this notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved in sub-

stantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in the notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of this final notice.

In NY K80327, dated November 21, 2003, CBP found that a reticulated foam filter ring was classified in subheading 8421.39.8015, HTSUSA, as centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: filtering or purifying machinery and apparatus for gases: other: other: other.

CBP has reviewed the matter and determined that the correct classification of the reticulated foam filter ring is in subheading 8421.31.0000, HTSUSA, which provides for centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: filtering or purifying machinery and apparatus for gases: intake air filters for internal combustion engines.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY K80327, 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) 966942, 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.

Dated: February 2, 2005

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,**HQ 966942**

February 2, 2005

CLA-2 RR:CR:GC 966942 KBR**CATEGORY:** Classification**TARIFF NO.:** 8421.31.0000

KARL F. KRUEGER
DANZAS AEI INTERCONTINENTAL
29200 Northwestern Highway
Southfield, MI 48034

RE: Revocation of NY K80327; Reticulated Foam Filter Ring

DEAR MR. KRUEGER:

This is in reference to New York Ruling Letter (NY) K80327, issued to you by the Customs and Border Protection ("CBP"), National Commodity Specialist Division, New York, on November 21, 2003, on behalf of Purolator Filters, a division of Arvin Meritor of Dexter, Missouri. That ruling concerned the classification of a reticulated foam filter ring, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reviewed NY K80327 and determined that the classification provided for the reticulated foam filter ring is incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published on December 15, 2004, in Vol. 38, No. 51 of the *Customs Bulletin*, proposing to revoke NY K80327. No comments were received in response to this notice.

FACTS:

In NY K80327, it was determined that the reticulated foam filter ring was classifiable in subheading 8421.39.8015, HTSUSA, as centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: filtering or purifying machinery and apparatus for gases: other: other: other. The reticulated foam filter ring is also referred to as a "foam wrap" and a "pre-filter." The article is a piece of open cell polyurethane foam approximately three feet, nine inches long with a width of four inches and a thickness of just under ½ inch. The four inch ends of the foam are sewn together to create a ring. The reticulated foam filter ring is intended to fit around the outside of a primary radial air filter element ring which is composed of a pleated cellulose, resin impregnated paper inside a plastic and metal-screen casing. The combined air filter is intended for installation in an automotive engine. The reticulated foam filter ring is intended to act as a pre-filter to remove larger and coarser particles, extending the life of the primary air filter element. The reticulated foam filter rings are sold in conjunction with the primary air filter element as well as sold separately as replacements. A sample of the reticulated foam filter ring with a primary air filter element was submitted for our review.

We have reviewed that ruling and determined that the classification of the reticulated foam filter ring is incorrect. This ruling sets forth the correct classification.

ISSUE:

What is the correct classification under the HTSUSA of a reticulated foam filter ring for use with a primary air filter element in an automotive engine?

LAW AND ANALYSIS:

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

In interpreting the headings and subheadings, CBP looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUSA. It is CBP's practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUSA provisions under consideration are as follows:

8421	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof:
*	* * * * *
	Filtering or purifying machinery and apparatus for gases:
8421.31.0000	Intake air filters for internal combustion engines
8421.39	Other:
8421.39.80	Other:
8421.39.8015	Other
*	* * * * *
	Parts:
*	* * * * *
8421.99.00	Other:
8421.99.0080	Other

The article at issue is a reticulated foam filter ring for use with a primary air filter in an automotive engine. The ENs for heading 8421, HTSUSA, in pertinent part, describe articles in this heading:

(II)(B) Filtering or purifying machinery, etc., for gases.

These gas filters and purifiers are used to separate solid or liquid particles from gases, either to recover products of value . . . , or to eliminate harmful materials (e.g., dust extraction, removal of tar, etc., from gases or smoke fumes, removal of oil from steam engine vapours).

They include:

- (1) **Filters and purifiers acting solely by mechanical or physical means;** these are of two types. In the first type, . . . the separating element consists of a porous surface or mass (felt, cloth, metallic sponge, glass wool, etc.). In the second type, separation is achieved by suddenly reducing the speed of the particles drawn along with the gas, so that they can then be collected by gravity, trapped on an oiled surface, etc. Filters of these types often incorporate fans or water sprays.

Filters of the first type include:

- (i) **Intake air filters for internal combustion engines.** These often combine the two systems described above.

CBP has previously found that an air filter for an automobile engine is classified in subheading 8421.31.0000, HTSUSA. *See* NY B89510 (October 9, 1997). However, the instant article is a “pre-filter” for an automobile air filter. The instant article is reticulated foam which wraps around the primary air filter element. Section XVI Note 2(a), HTSUSA, states:

Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 9473, 8485, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

Section XVI Note 2(b), HTSUSA, states:

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;

The ENs for Section XVI at General, (II) Parts (Section Note 2), states that “parts which in themselves constitute an article covered by a heading of this Section . . . ; these are in all cases classified in their own appropriate heading even if specially designed to work as part of a specific machine.” The EN language for Section XVI Note 2 was cited by the court in *Nidec Corp. v. United States*, 861 F. Supp. 136 (CIT 1994), *aff’d*, 68 F.3d 1333 (Fed. Cir. 1995). The court, applying the EN for Section XVI Note 2, determined that if a good can be classified in its own heading in accordance with Legal Note 2(a), then classification as a part under Legal Note 2(b) is inappropriate. *See also* HQ 962946 (May 1, 2000), HQ 952026 (July 23, 1992), HQ 963219 (February 5, 2001). Therefore, applying Note 2(a) and the court’s reasoning to the instant reticulated foam filter ring, directs classification of the article in its own appropriate subheading, 8421.31.0000, HTSUSA, and not as a part. *See* HQ 962623 (July 22, 1999)(finding that an air filter drum element for an automobile air conditioning/heat filter was not a filter “part” of subheading 8421.99.00, HTSUSA, but should be classified as a filter article itself).

CBP has previously found that pre-filters are classified in heading 8421, HTSUSA, as filters, not as parts of filters. *See* NY 898762 (June 29, 1994) and NY 898508 (June 28, 1994). In particular, CBP found that a pre-filter intended for automotive use was classified in subheading 8421.31.0000,

HTSUSA, as an intake air filter for internal combustion engines. *See* NY 899838 (August 4, 1994). Therefore, we agree with the decision you received in NY K80327, that the instant reticulated foam filter ring should not be classified as a “part”, but should be classified in its own right.

Air filters have long been made from foam and have been classified in heading 8421, HTSUSA. *See* NY 815060 (September 28, 1995), NY I86500 (October 18, 2002), and NY 810649 (June 8, 1995). The instant reticulated foam filter ring acts as a pre-filter for the primary air filter element. However, although it is considered a “pre-filter”, the reticulated foam filter ring is itself a “filter”. The reticulated foam filter ring actually removes unwanted particles from the air prior to reaching the primary air filter element and the automotive engine, thus, protecting the engine and extending the life of the primary air filter element. In the instant case, NY K80327 classified the pre-filter in the general “basket” provision of subheading 8421.39.8015, HTSUSA. However, as discussed above, the instant article is itself an air filter. Pursuant to GRI 1, the pre-filter is classified in subheading 8421.31.0000, HTSUSA, as intake filters for internal combustion engines, and not in the “basket” “other” provision of subheading 8421.39.8015, HTSUSA. *See, e.g., Apex Universal, Inc. v. United States*, CIT Slip Op. 98–69 (May 21, 1998) (“Classification of imported merchandise in a basket provision is appropriate only when there is no tariff category that covers the merchandise more specifically. [citations omitted]”); HQ 966659 (December 15, 2003); HQ 962759 (November 10, 1999). Therefore, although called a “pre-filter”, the instant reticulated foam filter ring for use in automobile engines for tariff purposes is a filter classified under subheading 8421.31.0000, HTSUSA, as an intake air filter for internal combustion engines.

HOLDING:

The reticulated foam filter ring is classified under subheading 8421.31.0000, HTSUSA, as centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof; filtering or purifying machinery and apparatus for gases; intake air filters for internal combustion engines. The 2004 column one, general duty rate is 2.5% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY K80327 dated November 21, 2003, is **revoked**. In accordance with 19 U.S.C. §1625(c), this ruling will become effective sixty (60) days after publication in the *Customs Bulletin*.

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