

Bureau of Customs and Border Protection

General Notices

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

Washington, DC, December 21, 2005,

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

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

19 CFR PART 177

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO CLASSIFICATION OF CHOCOLATE CONFECTIONERIES

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 chocolate confectioneries.

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 chocolate confectioneries and revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the

proposed modification was published in the Customs Bulletin of October 26, 2005, Vol. 39, No. 44. No comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after March 5, 2006.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, Tariff Classification and Marking 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 October 26, 2005, in the Customs Bulletin, Volume 39, Number 44, proposing to modify New York Ruling Letter (NY) C86680, dated May 21, 1998, pertaining to the tariff classification of chocolate confectioneries under the Harmonized Tariff Schedule of the United States (HTSUS). No comments were received in reply to the notice.

In NY C86680, dated May 21, 1998, the classification of chocolate covered peanuts, almonds and pralines imported in bulk was determined to be in subheading 1806.90.9011 or 1806.90.9019, HTSUS, depending on the ingredients. Since the issuance of that ruling, CBP has had a chance to review the classification of this merchandise and

has determined that classification is in error and that the product is properly classified in subheading 1806.90.55 or 1806.90.59, HTSUS, depending on whether the quantities provided for in the relevant quota has been filled.

As stated in the proposal notice, this modification 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 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. 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 C86680, 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) 967865 (*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: December 14, 2005

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967865
December 14, 2005
CLA-2 RR:CTF:TCM 967865ptl
CATEGORY: Classification
TARIFF NO.: 1806.90.55, 1806.90.59

MR. PIERRE MERHEJ
30 Basset Road
Brockton, MA 02401

RE: Sugar and Chocolate Coated Confections; Modification of NY C86680

DEAR MR. MERHEJ:

On May 21, 1998, the Customs National Commodity Specialist Division, in New York, issued you a ruling, NY C86680, on behalf of Edibles S.A.R.L. of Beirut, Lebanon, that classified four varieties of sugar or chocolate coated candies in subheadings of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). These products were to be imported either in bulk or packaged for retail sale.

Since that ruling was issued, Customs and Border Protection (CBP) has determined that the ruling contains errors regarding the classifications of the products when imported in bulk. This document corrects those errors.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by Title VI, a notice was published in the October 26, 2005, CUSTOMS BULLETIN, Volume 39, Number 44, proposing to modify NY C86680, and to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the notice.

FACTS:

Your initial ruling request asked the National Commodity Specialist Division to provide you with the classification of five varieties of sugar-coated candies under the HTSUS. Because the inquiry lacked sufficient information about one product, only four products were classified. "Roasted Almonds Covered with Sugar" were classified in subheading 1704.90.1000, HTSUSA, which provides for "Sugar confectionery (including white chocolate), not containing cocoa: Other: Confections or sweetmeats ready for consumption: Candied nuts." "Milk Chocolate Covered Peanuts Coated with Sugar" were classified in subheading 1806.90.9011, HTSUSA, which provides for "Chocolate and other food preparations containing cocoa: Other: Other . . . Confectionery: Containing peanuts or peanut products." The products "Dark Chocolate Covered Almonds Coated with Sugar" and "Milk Chocolate Praline Coated with Sugar" were both classified in subheading 1806.90.9019, HTSUSA, which provides for "Chocolate and other food preparations containing cocoa: Other: Other . . . Confectionery: Other."

Although your classification request indicated that the products would be imported either in bulk or packaged for retail sale, NY C86680 did not provide classifications for both situations.

The classification of the Roasted Almonds Covered with Sugar is not dependent on the packaging of the product and will remain unchanged. However, the classification of the chocolate-covered products does depend on the type of packaging and the ruling should have provided classifications for both instances when the product would be imported in bulk and when the product was imported packaged for retail sale. This ruling modifies NY

C86680 to provide the classifications when imported in bulk. The classification provided for the products packaged for retail sale is correct and is not affected by this ruling.

ISSUE:

What is the classification of chocolate covered confections when imported in bulk not packaged for retail sale?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

Although the products under consideration for classification all contain chocolate and are classified in Chapter 18, HTSUS, which provides for "Cocoa and Cocoa Preparations," they also contain a significant amount of sugar. Information provided with the classification request indicates that the dark chocolate covered almonds covered with sugar contain 74.72 percent sugar, the milk chocolate covered peanuts coated with sugar contain 45.24 percent sugar, and the milk chocolate praline covered with sugar contains 47.8 percent sugar.

Because of these ingredients, the HTSUS subheadings under consideration are as follows:

1806	Chocolate and other food preparations containing cocoa: Other: Other: Other: Other: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17:
1806.90.5500	Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions
1806.90.5900	Other ¹
1806.90.9000	Other

¹ See subheadings 9904.17.49–9904.17.65

Because these chocolate products all contain over 10 percent by weight sugar, we must consider whether they are described by additional U.S. note 3 to chapter 17 which provides:

3. For the purposes of this schedule, the term "articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17" means articles containing over 10 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, except (a) articles not principally of crystalline structure or not in dry amorphous form, the foregoing that are prepared for marketing to the ultimate consumer in the identical form and package in which imported; (b) blended syrups containing sugars derived

from sugar cane or sugar beets, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; (c) articles containing over 65 percent by dry weight of sugars derived from sugar cane or sugar beets, whether or not mixed with other ingredients, capable of being further processed or mixed with similar or other ingredients, and not prepared for marketing to the ultimate consumer in the identical form and package in which imported; or (d) cake decorations and similar products to be used in the same condition as imported without any further processing other than the direct application to individual pastries or confections, finely ground or masticated coconut meat or juice thereof mixed with those sugars, and sauces and preparations therefor.

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

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

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

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

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

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

The chocolate products which are imported in bulk are not “prepared for marketing to the ultimate consumer in the identical form and package in which they are imported.” Therefore, they are described by the terms of additional U.S. note 3 and are therefore subject to the quota under additional U.S. note 8 to Chapter 17 and are classified in subheadings 1806.90.55, HTSUS, and 1806.90.59, HTSUS. The chocolate products packaged for retail sale are “prepared for marketing to the ultimate consumer in the identical form and package in which they are imported” and will remain classified in the same subheadings they were in NY C86680.

HOLDING:

The products “Dark Chocolate Covered Almonds Covered with Sugar,” “Milk Chocolate Covered Peanuts Coated with Sugar,” and “Milk Chocolate Praline Covered with Sugar,” described in NY C86680, dated May 21, 1998, when imported in bulk are classified in subheading 1806.90.55, HTSUS, which provides for “Chocolate and other food preparations containing cocoa:

Other: . . . Other: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Described in additional U.S. note 8 to chapter 17 and entered pursuant to its provisions." The 2005 general duty rate is 3.5 percent *ad valorem*. When the quantities provided for in additional U.S. note 8 to Chapter 17 have been filled, the products will be classified in subheading 1806.90.59, HTSUS, which provides for "Chocolate and other food preparations containing cocoa: Other: . . . Other: Articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17: Other." The 2005 general duty rate for this over-quota subheading is 37.2¢/kg plus 6 percent *ad valorem* and such additional duties as may be imposed in chapter 99, HTSUS.

The classifications provided by NY C86680 for all products that are imported packaged for retail sale remain unchanged by this ruling, as does the classification for the product described as "Roasted Almonds Covered with Sugar."

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

NY C86680, dated May 21, 1998, is modified in accordance with this ruling.

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

Gail A. Hamill for MYLES B. HARMON,
Director;
Commercial and Trade Facilitation Division.

19 CFR PART 177

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF AN ITEM DESCRIBED IN ERROR AS AN ETHERNET CARD

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

ACTION: Notice of revocation of a ruling letter and treatment relating to tariff classification of an item described, in error, as an Ethernet card under the Harmonized Tariff Schedule of the United States ("HTSUS").

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (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 one ruling pertaining to the tariff classification of an item described as an Ethernet card under the HTSUS and any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation was published on October 26, 2005, in the CUS-

TOMS BULLETIN, Volume 39, Number 44. 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 March 5, 2006.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, Tariff Classification and Marking Branch (202) 572-8785.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with CBP laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the 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)), CBP published a notice in the October 26, 2005 CUSTOMS BULLETIN, Volume 39, Number 44, proposing to revoke NY K87985, dated August 4, 2004, and to revoke any treatment accorded to substantially identical transactions regarding the tariff classification of an item described in error as an Ethernet card. No comments were received in response to the proposed action.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to those 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. 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 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 final decision

In NY K87985, CBP classified a good identified and described as an Ethernet circuit card in subheading 8471.80.1000, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), which provides in relevant part for units of automatic data processing machines. However, the manufacturer and importer have informed CBP that the card we classified was misidentified and misdescribed. That is, the part number we identified does not exist, and the ruling's description of an Ethernet card is not the description associated with the line card for which the ruling was requested. CBP's review of relevant product literature supports this conclusion. As the ruling is based upon a part number that does not exist the ruling is being revoked.

However, CBP is taking the opportunity to replace the ruling with a new ruling on the correct part number and correct description of a line card for network switching. CBP has determined it should be classified in heading 8517, specifically subheading 8517.90.4400, HTSUSA, which provides for "Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones; parts thereof: Parts: Other: Printed circuit assemblies: For telegraphic apparatus."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY K87985 and any other ruling not specifically identified to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analyses set forth in HQ 967631, set forth as the 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 its publication in the CUSTOMS BULLETIN.

Dated: December 14, 2005

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[Attachment]

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

HQ 967631

December 14, 2005

CLA-2 RR: CTF: TCM 967631 DBS

CATEGORY: Classification

TARIFF NO.: 8517.90.4400

MR. RICHARD ZUPITO
MONTGOMERY INTERNATIONAL, INC.
341 Erickson Ave.
Essington, PA 19029

RE: Revocation of NY K87985; Classification of line cards for network switches

DEAR MR. ZUPITO:

On August 5, 2004, the Director, National Commodity Specialist Division, issued to you on behalf of Data Q Internet Equipment Co ("Data Q"), New York Ruling Letter (NY) K87985, classifying what was understood at the time to be a Cisco Ethernet circuit card in subheading 8471.80.1000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as a unit of an automatic data processing (ADP) machine. According to new information submitted to this office by counsel for Cisco Systems, Inc. ("Cisco") and confirmed by Data Q, the good subject to the ruling was identified by an incorrect part number and the description is that of an entirely different card. This ruling constitutes a revocation of NY K87985 and a binding ruling on the classification for the line card properly identified and described below.

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 the above-identified ruling was published on October 26, 2005, in the CUSTOMS BULLETIN, Volume 39, Number 44. No comments were received in response to the notice.

FACTS:

The merchandise in NY K87985 was described in relevant part as follows:

WS-X4148RJ45 Ethernet Card. The WS-X4148RJ45 is an Ethernet circuit card for use in the Cisco 4000 series switch family. It is designed to work only when inserted into an expansion slot within the Cisco 4000 series switches. The Cisco 4000 series switches are used in Local Area Network (LAN) and or in conjunction with a telecommunications network.

CBP was informed by counsel for Cisco that part number WS-X4148RJ45 does not exist; the actual part number is WS-X4148RJ45V (emphasis added). Further, the description matches not the WS-X4148RJ45V, but a different Cisco line card: a simple Ethernet card for LANs. Following this discovery, Data Q confirmed that the WS-X4148RJ45V line card is the merchandise for which the original ruling was requested, and not the good

described above (and incorrectly identified). We note that the confusion likely arose from the similarity of several part numbers and the variety of line cards described in the product literature website which accompanied the ruling request.

The WS-X4148RJ45V card is a 48-port switching line card (printed circuit assembly) with inline power for Cisco's Catalyst 4000 Series Switches for Internet Protocol (IP) telephony. The switches are used to create Virtual LANs between, e.g., corporate headquarters and branch offices in wide area networks. IP Telephony allows voice, data and video to be transmitted across a data network. Inline power, or "Power Over Ethernet" as described by Cisco is 48-volt DC power provided over standard Category 5 unshielded twisted-pair (UTP) cable up to 100 meters. The instant line card detects IP telephones and supplies power to them via the switch, in lieu of an electrical outlet. It permits the communication of telephone, fax and computers over a wide area. The card also provides an auxiliary VLAN feature which allows for configuration and network management of the VLANs while maintaining separate logical topologies for voice and data terminals. The card supports Cisco's Fast EtherChannel technology and the Link Aggregation standard used by Cisco's systems.

ISSUE:

Whether a line card for IP telephony is classified under heading 8517, Harmonized Tariff Schedule of the United States (HTSUS).

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). 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 GRIs may then be applied.

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

The HTSUS headings at issue are, in part, as follows:

8471 Automatic data processing machines and units thereof. . . .

* * *

8517 Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones; parts thereof:

To be classified in heading 8471, as an ADP unit, the merchandise must meet all three requirements of Note 5(B) to Chapter 84, HTSUS, which provides that:

Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph

(E) . . . a unit is to be regarded as being a part of a complete system if it meets all the following conditions:

- (a) It is of a kind solely or principally used in an automatic data processing system;
- (b) It is connectable to the central processing unit either directly or through one or more other units; and
- (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

Often, networked equipment can meet the requirements of Legal Note 5(B)(b) and 5(B)(c) to chapter 84, for the following reasons: they are connectable to the central processing unit either directly or through one or more other units; and, they are able to accept or deliver data in a form (codes or signals) which can be used by the system. Classification determinations often turn on whether networked equipment meet the terms of Legal Note 5(B)(a) to chapter 84, HTSUS. That is, CBP must determine whether the networked equipment is of a kind solely or principally used in an ADP system. Such a determination is consistent with CBP rulings on various networking equipment, including HQ 965047, dated June 19, 2002; HQ 963250, dated July 23, 2001; and HQ 963234 July 23, 2001.

In resolving this issue, importers must provide evidence of sole or principal use. An unsupported claim that these goods are solely or principally used in an ADP system is not evidence. The courts have provided the following factors to apply, which are indicative but not conclusive, when determining the principal use of merchandise: general physical characteristics; expectation of the ultimate purchaser; channels of trade; environment of sale (accompanying accessories, manner of advertisement and display); use in the same manner as merchandise which defines the class; economic practicality of so using the import; and recognition in the trade of this use. See Lenox Collections v. United States, 19 Ct. Int'l Trade 345, 347 (1995); Kraft, Inc. v. United States, 16 Ct. Int'l Trade 483 (1992); G. Heileman Brewing Co. v. United States, 14 CIT 614 (1990). See also United States v. Carborundum Company, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), cert. denied, 429 U.S. 979 (1976).

Information obtained from Cisco and confirmed by you, the importer, indicates that this line card is used exclusively in Cisco Catalyst 4000 Series Switches for IP telephony, which transmits voice, video and data over multi-mode Fast Etherchannel Links. The expectation of the ultimate purchasers, which are large enterprises including Internet Service Providers, is to transmit voice, video and data services over public or private lines, IP phone auto-detection, in-line power and configuration of multiple Virtual LANs (VLANs) over wide areas. The channels of trade and environment of sale for this line card are large enterprises for communication networks between corporate headquarters and branch locations. Because of its sole use in switches for IP telephony, their use is consistent with other apparatus for line telephony or line telegraphy, not simple Ethernet cards for use in an ADP system. We conclude the instant line card is not of a kind solely or principally used in an ADP system. As it does not satisfy Note 5(B)(a), Ch. 84, it cannot be classified in heading 8471, HTSUS.

In light of the card's use in line telephony and telegraphy, we turn to heading 8517, HTSUS. Explanatory Note (III)(A) to heading 8517 describes

the automatic telephonic or telegraphic switching apparatus in relevant part as follows:

These are of many types. The key feature of a switching system is the ability to provide, in response to coded signals, an automatic connection between users. Automatic switchboards and exchanges may operate by means of circuit switching, message switching or packet switching which utilize microprocessors to connect users by electronic means. Many automatic switchboards and exchanges incorporate analogue to digital converters, digital to analogue converters, data compression/decompression devices (codecs), modems, multiplexors, automatic data processing machines and other devices that permit the simultaneous transmission of both analogue and digital signals over the network, which enables the integrated transmission of speech, other sounds, characters, graphics, images or other data.

As demonstrated by the facts above, the switches that the WS-X4148RJ45V card supports provide an automatic connection between users (e.g., of the VLANs) for the transmission of signals over a network, which enables the integrated transmission of speech, other sounds, characters, graphics, images or other data (i.e., IP telephony). Thus, they are included in heading 8517, HTSUS, as electrical apparatus for line telephony and line telegraphy. The line card at issue is a printed circuit assembly used exclusively with these switches, detecting and powering IP telephones through the switch.

It is a well-established rule that a 'part' of an article is an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article." United States v. Willoughby Camera Stores, Inc., 21 CCPA 322, 324, T.D. 46,851 (1933) (emphasis in original), cert denied, 292 U.S. 640 (1934). In determining whether an item is a part of an article, the Court looks to the "nature, function, and purpose of an item in relation to the article to which it is attached or designed to serve . . ." Ideal Toy Corp. v. United States, 58 CCPA 9, 13, C.A.D. 996, 433 F. 2d 801, 803 (1979). However, a device may be considered a part of an article even though the device is not necessary to the operation of the article, provided that once the device is installed the article cannot function properly without it. United States v. Antonio Pompeo, 43 C.C.P.A. 9, C.A.D. 602 ((Cust. & Pat. App., 1955). To meet this requirement, the device must be dedicated for use upon the article. See Beacon Cycle Supply Co., Inc. v. United States, 81 Cust. Ct. 46, 50-51 C.D. 4764 (1978).

Further, EN 85.17 states that subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the apparatus of this heading are also classified here. Section XVI, Note 2 (b) provides that parts that are not themselves goods of another heading and are suitable for use solely or principally with a particular machine of Chapters 84 or 85 are to be classified with those machines. Based upon our review of the product literature, the line card, being designed for inline power and exclusively used with the particular series of switches for a inline power multi-service communications infrastructure, is classifiable as a part of the apparatus of heading 8517, HTSUS. As the switch to which this is a part transmits voice and data, it would be classified as telegraphic apparatus. Thus, the line card is classified as a printed circuit assembly for telegraphic apparatus.

HOLDING:

The Cisco WS-X4148RJ45V is classified in heading 8517, HTSUS. It is specifically provided for in subheading 8517.90.4400, HTSUSA, as "Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones; parts thereof: Parts: Other: Printed circuit assemblies: For telegraphic apparatus." The 2005 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 K87985, dated August 5, 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.

Gail A. Hamill for MYLES B. HARMON,
Director;
Commercial and Trade Facilitation Division.

19 CFR PART 177

**PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO
CLASSIFICATION OF MICROWAVE POPCORN**

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of microwave popcorn.

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

DATE: Comments must be received on or before February 3, 2006.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229. Submitted com-

ments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at 202-572-8768.

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

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of microwave popcorn. Although in this notice CBP is specifically referring to one ruling, New York Ruling Letter (NY) H83710, dated July 16, 2001, 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.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to sub-

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

In NY H83710, dated July 16, 2001, the classification of a product commonly referred to as microwave popcorn was determined to be in subheading 1005.90.4040, HTSUS, which provides for corn (maize), other, other, popcorn. This ruling letter is set forth in "Attachment A" to this document. Since the issuance of that ruling, CBP has had a chance to review the classification of this merchandise and has determined that the classification is in error. Because of the addition of other ingredients to the microwave corn, the product constitutes a preparation of corn kernels for popping and is properly classified in subheading 2008.19.9090, HTSUS, which provides for fruit, nuts and other edible parts of plants, nuts, peanuts (ground-nuts) and other seeds, other, other.

CBP, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY H83710, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967900 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 14, 2005

Gail A. Hamill for MYLES B. HARMON,
Director;
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY H83710
July 16, 2001
CLA-2-10:RR:NC:2:231 H83710
CATEGORY: Classification
TARIFF NO.: 1005.90.4040

MS. ANDREA MILLER
COSTCO WHOLESALE
999 Lake Drive
Issaquah, WA 98027

RE: The tariff classification of microwave buttered popcorn from Mexico.

DEAR MS. MILLER:

In your letter, dated July 9, 2001, you requested a classification ruling.

The merchandise is comprised of "Act II" brand microwave buttered popcorn. The popcorn is available in three flavors – "butter," "extra butter," and "natural." "Butter" popcorn contains popcorn (maize), partially hydrogenated vegetable oil, salt, natural flavoring, and achiote (coloring). "Extra butter" popcorn contains popcorn (maize), partially hydrogenated vegetable oil, salt, natural and artificial flavoring, and achiote. "Natural" popcorn contains popcorn (maize), partially hydrogenated soybean oil, and salt. All flavoring and seasoning are contained in each package. The packages are designed to be heated in the microwave. Each package is 99 grams and will be sold in boxes of 28 packages.

The applicable subheading for microwave buttered popcorn will be 1005.90.4040, Harmonized Tariff Schedule of the United States (HTS), which provides for corn (maize), other, other, popcorn. The general rate of duty will be 0.25 cents per kilogram.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Brady at 212-637-7064.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967900
CLA-2 RR:CTF:TCM 967900ptl
CATEGORY: Classification
TARIFF NO.: 2008.19.9090

MS. ANDREA MILLER
COSTCO WHOLESALE
999 Lake Drive
Issaquah, WA 98027

RE: Microwave Buttered Popcorn; Revocation of NY H83710

DEAR MS. MILLER:

On July 16, 2001, the Customs and Border Protection (CBP) National Commodity Specialist Division, in New York, issued New York Ruling Letter (NY) H83710 to you classifying "Act II" brand microwave buttered popcorn under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 1005.90.4040, HTSUS, which provides for corn (maize), other, other, popcorn. CBP has had occasion to review that ruling and, for the reasons stated below, has determined that it is in error. This letter revokes NY H83710 and provide the correct classification for microwave buttered popcorn.

FACTS:

The "Act II" brand popcorn products under consideration in NY H83710 are available in three flavors. "Butter" popcorn contains popcorn (maize), partially hydrogenated vegetable oil, salt, natural flavoring, and achiote (coloring). "Extra butter" popcorn contains popcorn (maize), partially hydrogenated vegetable oil, salt, natural and artificial flavoring, and achiote. "Natural" popcorn contains popcorn (maize), partially hydrogenated vegetable oil, and salt. The flavorings and seasonings are packaged together with the popcorn in individual 99 gram packages that are designed to be heated in a microwave. The individual packages will be sold in boxes containing 28 packages.

ISSUE:

Whether packages of popcorn and other ingredients for use in microwave ovens are mixtures or preparations?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the

official interpretation of the Harmonized System at the international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS subheadings under consideration are as follows:

1005	Corn (maize):
	* * *
1005.90	Other:
	* * *
1005.90.40	Other
1005.90.4040	Popcorn
2008	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:
	Nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together:
	* * *
2008.19	Other, including mixtures:
	* * *
	Other, including mixtures:
2008.90.90	Other
2008.19.9090	Other

As imported, the packages of microwave popcorn consist of kernels of corn (maize) that have been mixed with specific proportions of partially hydrogenated vegetable oil, salt, natural or artificial flavoring, and, in some, achiote (coloring). These packages are marketed to consumers who will purchase and use the products as offered, without any further preparation on their part.

According to Note 1 (b) to Chapter 10, grains which have been hulled or otherwise worked are excluded from Chapter 10. Additionally, the General Explanatory Notes to Chapter 10 provide, in relevant part, that “This Chapter covers cereal grains only, . . .” Since the products at issue have been prepared by treating with partially hydrogenated vegetable oil, salt, and other ingredients, they are excluded from Chapter 10 and they should not be classified in subheading 1005.90.4040, HTSUS.

It is CBP’s opinion that the specific ingredient composition of these products has advanced them from being mixtures of popcorn kernels and other ingredients to products that are preparations consisting of popcorn kernels with specific additional ingredients which are designed to facilitate the popping of the kernels and which have been included to impart a specific taste or flavor to the finished product.

Based on this analysis, the microwave popcorn packages are preparations provided for in heading 2008, HTSUS, which provides for “fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not

containing added sugar or other sweetening matter or spirit, not elsewhere specified or included.”

HOLDING:

Microwave popcorn packages consisting of popcorn (maize), partially hydrogenated vegetable oil, natural and/or artificial flavor and, possibly, coloring, and salt, and designed for use with microwave ovens are classified in subheading 2008.19.9090, HTSUS, which provides for “Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together: Other, including mixtures: Other, including mixtures: Other, Other.” The 2005 duty rate is 17.9% *ad valorem*.

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

NY H83710, dated July 16, 2001, is revoked.

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

**PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF EVEROLIMUS**

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

ACTION: Proposed revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of Everolimus.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to revoke one ruling letter relating to the tariff classification of Everolimus under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

DATE: Comments must be received on or before February 3, 2006.

ADDRESS: Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at the offices of U.S. Customs and Border Protection, 799 9th Street, NW, Washington, D.C. during regular business

hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 572-8713.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of Everolimus. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) R00794, dated September 16, 2004 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during 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 proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice

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

In NY R00794, CBP ruled that Everolimus was classified in subheading 2934.99.4700, HTSUSA, which provides for "Nucleic acids and their salts, whether or not chemically defined; Other heterocyclic compounds: Other: Other: Other: Drugs." Since the issuance of that ruling, CBP has reviewed the classification of this item and has determined that the cited ruling is in error, and that Everolimus should be classified in subheading 2941.90.5000, HTSUS, which provides for "Antibiotics: Other: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY R00794 and any other ruling not specifically identified, to reflect the proper classification of Everolimus according to the analysis contained in Headquarters Ruling Letter (HQ) 967895, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: December 14, 2005

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY R00794
September 16, 2004
CLA-2-30:RR:NC:2:238 R00794
CATEGORY: Classification
TARIFF NO.: 2934.99.4700

JAMES C. McMAHON, Ph.D.
GUIDANT CORPORATION
26531 Ynez Road
Temecula, CA 92591

RE: The tariff classification of Everolimus (CAS-159351-69-6), imported in bulk form, from Switzerland

DEAR DR. McMAHON:

In your letter dated September 3, 2004, you requested a tariff classification ruling.

The subject product, Everolimus, a macrocyclic lactone (macrolide), is an investigational immunosuppressive drug currently awaiting approval, pursuant to a new drug application (NDA) filed with the FDA (NDA-21-560), for use in reducing graft vasculopathy. You have indicated, via telephone, to a member of my staff that Everolimus is a semisynthetic derivative of Rapamycin, currently known as Sirolimus. In this respect, we note that one of the chemical names for Everolimus is, in fact, 42-O-(2-hydroxyethyl)rapamycin. However, we are unable to find - nor have you furnished - any scientific evidence that - unlike Sirolimus - Everolimus has the ability to kill or inhibit the growth of microorganisms. Accordingly, pursuant to *Lonza, Inc. v. U.S.* [46 F.3d 1098 (Fed. Cir. 1995)] and the Explanatory Notes to heading 2941, HTS, it is our determination that Everolimus is precluded from classification as an antibiotic, for tariff purposes.

The applicable subheading for Everolimus, imported in bulk form, will be 2934.99.4700, Harmonized Tariff Schedule of the United States (HTS), which provides for "Nucleic acids and their salts, whether or not chemically defined; other heterocyclic compounds: Other: Other: Other: Drugs." The rate of duty will be 3.7 percent ad valorem. You state in your letter that "Everolimus should be eligible for Special Treatment pursuant to the Agreement on Trade in Pharmaceutical Products, Special Notes 'K' of the Harmonized Tariff Schedule of the United States, Supplement 1." However, please be advised that, at the present time, Everolimus is not listed in the Pharmaceutical Appendix to the Tariff Schedule.

This merchandise may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number 1-888-443-6332.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is im-

ported. If you have any questions regarding the ruling, contact National Import Specialist Harvey Kuperstein at 646-733-3033.

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



[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967895
CLA-2 RR:CTF:TCM 967895 KSH
TARIFF NO.: 2941.90.5000

CARL D. CAMMARATA, ESQ.
LAW OFFICES OF GEORGE R. TUTTLE
Three Embarcadero Center, Suite 1160
San Francisco, CA 94111

RE: Revocation of New York Ruling Letter (NY) R00794, dated September 16, 2004; Classification of Everolimus.

DEAR MR. CAMMARATA:

This is in response to your letter of August 15, 2005, on behalf of your client Guidant Corporation, in which you request reconsideration of New York Ruling Letter (NY) R00794, issued on September 16, 2004, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of Everolimus. Everolimus was classified in subheading 2934.99.4700, HTSUS, which provides for "Nucleic acids and their salts, whether or not chemically defined; other heterocyclic compounds: Other: Other: Other: Drugs." You assert that because the merchandise at issue exhibits antifungal properties, it is classified in subheading 2941.90.5000, HTSUS, which provides for "Antibiotics: Other: Other: Other." In accordance with your request for reconsideration of NY R00794, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

FACTS:

Everolimus is a macrocyclic lactone immunosuppressive drug being investigated for use in reducing graft vasculopathy. Everolimus is a semisynthetic derivative of Rapamycin, currently known as Sirolimus. It is an organic compound which is stabilized with a second antioxidant organic compound. As such, Everolimus is a mixture of two organic compounds.

ISSUE:

Whether Everolimus is classified as an other heterocyclic compound of heading 2934, HTSUS, or as an antibiotic of heading 2941, 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 de-

terminated 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 (E.N.), 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.

Although Everolimus is a mixture of two organic compounds, Note 1 to Chapter 29, HTSUS, states that Chapter 29, HTSUS, includes single compounds with an added stabilizer. Inasmuch as the second compound is a stabilizer, a determination whether classification in Chapter 29, HTSUS, is proper is warranted.

Heading 2941, HTSUS, provides for antibiotics. The E.N. to 2941 states in relevant part:

Antibiotics are substances secreted by living micro-organisms which have the effect of killing other micro-organisms or inhibiting their growth. They are used principally for their powerful inhibitory effect on pathogenic micro-organisms, particularly bacteria or fungi, or in some cases on neoplasms. They can be effective at a concentration of a few micrograms per ml in the blood.

In Lonza, Inc. v. U.S., 46 F.3d 1098 (Fed. Cir. 1995), the court stated that “antibiotics are commonly understood to mean substances, produced either naturally or synthetically, that exhibit an ability to kill or inhibit the growth of microorganisms.” Id.

You have submitted additional information in your request for reconsideration which was not included in your original request that evidences that Everolimus is an antibiotic that has bacteriostatic properties that kill or inhibit the growth of microorganisms.

Based on this additional evidence, Everolimus is *prima facie* classifiable in heading 2941, HTUS, and heading 2934, HTSUS. However, Note 3 to Chapter 29, HTSUS, states:

Goods which could be included in two or more of the headings of this chapter are to be classified in that one of those headings which occurs last in numerical order.

In accordance with Note 3 to Chapter 29, HTSUS, the E.N. to 2941, HTSUS, and Lonza, supra, Everolimus is classified in subheading 2941.90.5000, HTSUS.

HOLDING:

Everolimus is classified in subheading 2941.90.5000, HTSUS, which provides for “Antibiotics: Other: Other: Other.” 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 R00794, dated September 16, 2004, is hereby revoked.

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

19 CFR PART 177

**REVOCACTION OF RULING LETTERS AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF LAMINATED
STEEL SHEET**

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

ACTION: Notice of revocation of ruling letters and treatment relating to tariff classification of laminated steel sheet.

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 five (5) rulings relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of laminated steel sheet, and is revoking any treatment CBP has previously accorded to substantially identical transactions. The merchandise is steel sheet laminated on at least one side with polyethylene or polyvinyl chloride. Notice of the proposed revocations was published in the October 19, 2005, Customs Bulletin, Vol. 39, No. 43. Two comments were received in response to this notice. In addition, an interested party involved in substantially identical transactions responded to the notice and advised CBP of another ruling affected by the proposed action. This ruling, too, is being revoked.

EFFECTIVE DATE: These revocations are effective for merchandise entered or withdrawn from warehouse for consumption on or after March 5, 2006.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification and Marking Branch (202) 572-8779.

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), 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 based on the premise 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 rights and responsibilities 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, 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 declare value on imported merchandise, and to provide other necessary information to enable CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to CBP's obligations, a notice was published on October 19, 2005, in the Customs Bulletin, Volume 39, Number 43, proposing to revoke NY 893462, dated January 31, 1994, NY J86283, dated July 16, 2003, NY J85044, dated June 26, 2003, and NY I80611, dated April 19, 2002. Two comments were received in response to this notice. One commenter requested a clarification of the proposal but otherwise favored it, while the other commenter favored the revocations without comment. In addition, an interested party involved in substantially identical transactions advised CBP that NY H84957, dated August 30, 2001, was believed to be affected by CBP's proposed action. CBP agrees.

As stated in the proposed notice, these revocations will cover any rulings on this merchandise which may exist but 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 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment it previously accorded to substantially identical transactions. 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 transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY 893462, NY J86283, NY J85044, NY I80611, and NY H84957 to reflect the proper classification of laminated steel sheet in provisions of Chapter 72, HTSUS, as flat-rolled products of iron or nonalloy steel, of other alloy steel, or of stainless steel, as appropriate, in accordance

with the analysis in HQ 967681, HQ 967682, HQ 967683, HQ 967684 and HQ 967984, which are set forth as Attachments A through E to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment it previously accorded 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: December 14, 2005

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967681
December 14, 2005
CLA-2 RR:CR:GC 967681 JAS
CATEGORY: Classification
TARIFF NO.: 7210, 7212

MR. A. J. SPATARELLA
KANEMATSU USA INC.
114 West 47th Street, 23rd Floor
New York, NY 10036

RE: PVC Laminated Steel Sheet; NY 893462 Revoked

DEAR MR. SPATARELLA:

In NY 893462, which the then-Area Director of Customs, New York Seaport, issued to you on January 31, 1994, certain pvc laminated steel sheet was found to be classifiable as other articles of iron or steel, in subheading 7326.90.90 (now 7326.90.85), Harmonized Tariff Schedule of the United States (HTSUS).

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 893462 was published on October 19, 2005, in the Customs Bulletin, Volume 39, Number 43. Two comments were received in response to this notice, both favoring the proposal, but without elaboration.

FACTS:

The merchandise was described in NY 893462 as unalloyed steel laminated on one side with polyvinyl chloride (pvc) and coated or plated on the reverse side with zinc metal. There is no further description of this merchandise nor any indication of its intended use.

The HTSUS provisions under consideration are as follows:

7210	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, clad, plated or coated:
7210.30.00	Electrolytically plated or coated with zinc
	Otherwise plated or coated with zinc:
7210.49.00	Other
*	* * *
7212	Flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, clad, plated or coated:
7212.20.00	Electrolytically plated or coated with zinc
7212.30	Otherwise plated or coated with zinc:
	Of a width of less than 300 mm:
7212.30.10	Of a thickness exceeding 0.25 mm or more
7212.30.30	Other
7212.30.50	Other
*	* * *
7326	Other articles of iron or steel
7326.90	Other:
	Other:
	Other:
7326.90.90 (now 90.85)	Other

ISSUE:

Whether the merchandise, processed as described, is a product of Chapter 72.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Chapter 72, Note 1(k), HTSUS, defines Flat-rolled products, in part, in terms of thickness and width requirements, and includes those products with patterns in relief derived directly from rolling (for example, grooves, ribs, etc.) and those which have been perforated, corrugated or polished, provided that they do not thereby assume the character of articles or products of other headings. The pvc laminated steel sheet at issue meets these descriptions.

The Harmonized Commodity Description and Coding System Explanatory Notes (Ens) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the Ens provide a commentary on the scope of each heading of the HTSUS. U.S. Customs and Bor-

der Protection believes the Ens should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 73.26 indicates the heading covers all iron or steel articles other than those included in the preceding headings of Chapter 73, or covered by Note 1 to Section XV or included in Chapters 82 or 83 or more specifically covered elsewhere in the Nomenclature. In addition, General Explanatory Note (IV)(c) to Chapter 72 indicates that the finished products of that chapter may be subjected to further finishing treatments or converted into other articles. Included are surface treatments or other operations to improve the properties or appearance of the metal, protect it against rusting and corrosion, etc. Except as otherwise provided in the text of certain headings, such treatments do not affect the heading in which the goods are classified. Among these treatments or operations are coating with metal, at General Explanatory Note (IV)(c)(2)(d)(iv), and lamination, at General Explanatory Note(IV)(c)(2)(g).

Uniting a pvc layer with a nonalloy steel sheet by an epoxy adhesive or otherwise constitutes a lamination. Typical applications for vinyl laminated steel is in the manufacturing sector, i.e., to give the high gloss look of stainless steel. Zinc is a commonly used coating that imparts corrosion resistance to steel. NY 893462 noted that lamination was not mentioned in any Legal or Explanatory Note as a process to which flat-rolled products may be subjected. Further, NY 893462 does not state the intended end use of the pvc laminated steel sheet at issue. Amendments to the Ens do not change the scope of the HTSUS headings but are a clarification of the current text. Notwithstanding the fact that General Explanatory Note (IV)(c) was not amended to add subparagraph (c)(2)(g) until 1998, it is apparent that individually, or in combination, these processes are designed to improve the properties or appearance of metal and to protect it against rust or corrosion. Therefore, the subject merchandise is provided for both in heading 7210 and in heading 7212. By its terms, heading 7326 is eliminated from consideration.

HOLDING:

Under the authority of GRI 1, the pvc laminated nonalloy zinc-coated steel sheet is provided for in heading 7210 or in heading 7212, HTSUS, depending on width. It is classifiable in the appropriate subheading based on thickness and manner of coating or plating. The column 1 rate of duty under all of these provisions 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/tata/hts.

EFFECT ON OTHER RULINGS:

NY 893462, dated January 31, 1994, 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.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967682
December 14, 2005
CLA-2 RR:CR:GC 967682 JAS
CATEGORY: Classification
TARIFF NO.: 7226.99.0000

MR. TIMOTHY SHEPHERD
NISSIN CUSTOMS SERVICE, INC.
101 Mark Street, Suite G
Wood Dale, ILL 60191

RE: "Finemet" Flexible Magnetic Shielding Sheet; NY J86283 Revoked

DEAR MR. SHEPHERD:

In NY J86283, which the Director, National Commodity Specialist Division, Bureau of Customs and Border Protection (CBP), New York, issued to you on behalf of Hitachi Metals America on July 16, 2003, certain alloy steel ribbon to which is laminated polyethyleneterephthalate (PET) was found to be classifiable as other articles of iron or steel, in subheading 7326.90.8587, Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

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 86283 was published on October 19, 2005, in the Customs Bulletin, Volume 39, Number 43. Two comments were received in response to this notice, both favoring the proposal but without elaboration.

FACTS:

The merchandise, known as "Finemet" (MS-F), was described in NY J86283 as a thin, flexible magnetic shielding material made of a laminate sandwich consisting of 5 alternating layers: PET (polyethyleneterephthalate) film-adhesive-"Finemet" ribbon-adhesive-PET film. Alloy steel, in ribbon form, is first produced by ejecting molten steel from a crucible onto a rotating chill roll. The molten steel is rapidly quenched, then heat treated, after which adhesive is applied to both sides and PET is applied by a laminating process. Product literature submitted with the ruling request indicates the resulting "Finemet" (MS-F) measures approximately 610 mm x 460 mm x 0.15 mm. This product is designed to eliminate broadband noise in such electrical devices as mobile phones, digital cameras and personal computers by virtue of its magnetic shielding properties.

The HTSUS provisions under consideration are as follows:

7226 Flat-rolled products of other alloy steel, of a width of less than 600 mm:

Other:

7226.99.00 Other

* * * *

7326 Other articles of iron or steel

7326.90 Other:

Other:

Other:

7326.90.85 Other

ISSUE:

Whether the merchandise, processed as described, is a product of Chapter 72.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Chapter 72, Note 1(k), HTSUS, defines Flat-rolled products, in part, in terms of thickness and width requirements, and includes those products with patterns in relief derived directly from rolling (for example, grooves, ribs, etc.) and those which have been perforated, corrugated or polished, provided that they do not thereby assume the character of articles or products of other headings. The “Finemet” (MS-F) meets these descriptions.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 73.26 indicates the heading covers all iron or steel articles other than those included in the preceding headings of Chapter 73, or covered by Note 1 to Section XV or included in Chapters 82 or 83 or more specifically covered elsewhere in the Nomenclature. In addition, General Explanatory Note (IV)(C) to Chapter 72 indicates that the finished products of that chapter may be subjected to further finishing treatments or converted into other articles. Included are surface treatments or other operations to improve the properties or appearance of the metal, protect it against rusting and corrosion, etc. Except as otherwise provided in the text of certain headings, such treatments do not affect the heading in which the goods are classified. Among these treatments or operations, at General Explanatory Note (IV)(C)(2)(g), is lamination.

The uniting of five alternating layers of PET film and alloy steel ribbon utilizing an adhesive constitutes a lamination. It is apparent that this laminating process is designed to improve the properties of the alloy steel ribbon by better suiting it for use in shielding the magnetic field created by high voltage distribution lines or power distribution equipment, thereby attenuating broadband noise. Therefore, the subject merchandise is provided for as a flat-rolled product of other alloy steel, of heading 7226. By its terms, heading 7326 is eliminated from consideration.

HOLDING:

Under the authority of GRI 1, "Finemet" (MS-F) is provided for in heading 7226. It is classifiable in subheading 7226.99.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The column 1 rate of duty under this provision 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/tata/hts.

EFFECT ON OTHER RULINGS:

NY J86283, dated July 16, 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.

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

[ATTACHMENT C]

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

HQ 967683

December 14, 2005

CLA-2 RR:CR:GC 967683 JAS

CATEGORY: Classification

TARIFF NO.: 7210.11.0000, 7210.12.0000, 7210.50.0000,
7210.90.6000, 7210.90.9000

MR. JAYNI LEE
HYOSUNG (AMERICA), INC.
910 Columbia Street
Brea, CA 92821

RE: Polyester/Polyethylene Laminated Steel Sheet; NY J85044 Revoked

DEAR MR. LEE:

In NY J85044, which the Director, National Commodity Specialist Division, Bureau of Customs and Border Protection (CBP), New York, issued to you on June 26, 2003, certain carbon steel sheet to which is laminated a polyester/polyethylene film was found to be classifiable as other articles of iron or steel, of tinplate, in subheading 7326.90.1000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), or as other articles of iron or steel, other, in subheading 7326.90.8587, HTSUSA.

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 J85044 was published on October 19, 2005, in the Customs Bulletin, Volume 39, Number 43. Two comments were received in response to this notice, both favoring the proposal but without elaboration.

FACTS:

The merchandise was described in NY J85044 as pre-existing PET/PP film laminated on both sides of a flat-rolled steel substrate of tinfoil, tin-free steel or nickel-plated steel. The steel substrate, imported in coils, ranges from 0.15 mm to 1.0 mm in thickness and from 700 mm to 950 mm in width. The product is typically used in the manufacture of aerosol cans, paint cans and food cans.

The HTSUS provisions under consideration are as follows:

7210	Flat-rolled products of iron or nonalloy, of a width of 600 mm or more, clad, plated or coated:
	Plated or coated with tin:
7210.11.00	Of a thickness of 0.5 mm or more
7210.12.00	Of a thickness of less than 0.5 mm
7210.50.00	Plated or coated with chromium oxides or with chromium and chromium oxides
7210.90	Other:
	Other:
7210.90.60	Electrolytically coated or plated with base metal
7210.90.90	Other
*	* * *
7326	Other articles of iron or steel
7326.90	Other:
7326.90.10	Of tinfoil
	Other:
	Other:
7326.90.85	Other

ISSUE:

Whether the merchandise, processed as described, is a product of Chapter 72.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Chapter 72, Note 1(k), HTSUS, defines Flat-rolled products, in part, in terms of thickness and width requirements, and includes those products with patterns in relief derived directly from rolling (for example, grooves, ribs, etc.) and those which have been perforated, corrugated or polished, provided that they do not thereby assume the character of articles or products of other headings. The "Finemet" (MS-F) meets these descriptions.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Your ruling request, dated May 23, 2003, contained the following product description “PET/PP coated Steel (Polyester/Polyethylene Laminated Steel)” with the further indication that the PET/PP film is laminated to the steel substrate. We note that “PET” is an acronym designating polyethyleneterephthalate, which is a polyester, while “PP” normally designates polypropylene.

EN 73.26 indicates the heading covers all iron or steel articles other than those included in the preceding headings of Chapter 73, or covered by Note 1 to Section XV or included in Chapters 82 or 83 or more specifically covered elsewhere in the Nomenclature. In addition, General Explanatory Note (IV)(C) to Chapter 72 indicates that the finished products of that chapter may be subjected to further finishing treatments or converted into other articles. Included are surface treatments or other operations to improve the properties or appearance of the metal, protect it against rusting and corrosion, etc. Except as otherwise provided in the text of certain headings, such treatments do not affect the heading in which the goods are classified. Among these treatments or operations, at General Explanatory Note (IV)(C)(2)(g), is lamination.

Layers of PET/PP applied to both sides of flat-rolled steel substrates of tinplate, tin-free steel and nickel-plated steel utilizing adhesives constitutes a lamination. It is apparent that this laminating process is designed to improve the properties of the alloy steel substrate by better suiting it for use in food cans and personal hygiene applications such as shaving and deodorant cans. Therefore, the subject merchandise is provided for as a flat-rolled product of nonalloy steel, of heading 7210. By its terms, heading 7326 is eliminated from consideration.

HOLDING:

Under the authority of GRI 1, the PET/PP laminated steel sheet is provided for in heading 7210. The tinplate steel product is classifiable in subheading 7210.11.0000 or in subheading 7210.12.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), depending on thickness. The tin-free steel product is classifiable in subheading 7210.50.0000, HTSUSA, and the nickel-plated steel product is classifiable in subheading 7210.90.6000 or subheading 7210.90.9000, HTSUSA, as appropriate. The column 1 rate of duty under these provisions 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/tata/hts.

As you may know, Presidential Proclamation 7741, dated December 4, 2003, effectively terminated the so-called 201 steel safeguard program under which additional duties on merchandise classified in the provisions listed above might have been imposed. Also, you should direct inquiries concerning possible antidumping and/or countervailing duties on this merchandise as instructed in NY J85044.

EFFECT ON OTHER RULINGS:

NY J85044, dated June 26, 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.

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



[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967684
December 14, 2005
CLA-2 RR:CR:GC 967684 JAS
CATEGORY: Classification
TARIFF NO.: 7210.70.3000, 7212.40.5000

MS. DIANE CACHIA
ACTION CUSTOMS EXPEDITERS, INC.
115 Christopher Columbus Drive
Jersey City, NJ 07302

RE: Vinyl Laminated Steel Sheet; NY I80611 Revoked

DEAR MS. CACHIA:

In NY I80611, which the Director, National Commodity Specialist Division, Bureau of Customs and Border Protection (CBP), New York, issued to you on April 19, 2002, on behalf of LG Chemical America Inc., high gloss laminated steel sheet was found to be classifiable as other articles of iron or steel, in subheading 7326.90.8586, Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

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 I80611 was published on October 19, 2005, in the Customs Bulletin, Volume 39, Number 43. Two comments were received in response to this notice, both favoring the proposal but without elaboration.

FACTS:

The merchandise, described in NY I80611 as high gloss laminated steel sheet, is cut-to-length and ranges from 19.6 inches to 28.6 inches and from 36 inches to 39 inches in width. One side of the steel substrate is painted and the other side is coated with an adhesive layer to which a pre-existing vinyl sheet will be laminated. The vinyl sheet gives the steel the look of stainless steel. These sheets, of nonalloy steel, will be used in the manufacture of refrigerators and dishwashers.

The HTSUS provisions under consideration are as follows:

7210	Flat-rolled products of iron or nonalloy steel, of a width of 600 mm or more, clad, plated or coated:
7210.70	Painted, varnished or coated with plastics:
7210.70.30	Not coated or plated with metal and not clad
*	* * * *
7212	Flat-rolled products of iron or nonalloy steel, of a width of less than 600 mm, clad, plated or coated:
7212.40	Painted, varnished or coated with plastics:
7212.40.50	Other
*	* * * *
7326	Other articles of iron or steel
7326.90	Other:
	Other:
	Other:
7326.90.85	Other

ISSUE:

Whether the merchandise, processed as described, is a product of Chapter 72.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Chapter 72, Note 1(k), HTSUS, defines Flat-rolled products, in part, in terms of thickness and width requirements, and includes those products with patterns in relief derived directly from rolling (for example, grooves, ribs, etc.) and those which have been perforated, corrugated or polished, provided that they do not thereby assume the character of articles or products of other headings. The high gloss laminated steel sheet meets these descriptions.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

EN 73.26 indicates the heading covers all iron or steel articles other than those included in the preceding headings of Chapter 73, or covered by Note 1 to Section XV or included in Chapters 82 or 83 or more specifically covered elsewhere in the Nomenclature. In addition, General Explanatory Note (IV)(C) to Chapter 72 indicates that the finished products of that chapter may be subjected to further finishing treatments or converted into other ar-

ticles. Included are surface treatments or other operations to improve the properties or appearance of the metal, protect it against rusting and corrosion, etc. Except as otherwise provided in the text of certain headings, such treatments do not affect the heading in which the goods are classified. Among these treatments or operations are painting, at General Explanatory Note (IV)(C)(2)(d)(v), and lamination, at General Explanatory Note (IV)(C)(2)(g).

Uniting a pre-existing vinyl sheet with a painted other alloy steel sheet by an adhesive constitutes a lamination. It is apparent that this process, which you state gives the steel the look of stainless steel, is designed to improve the properties or appearance of the metal. The vinyl laminated steel sheet is provided for in heading 7210 or in heading 7212, depending on width. By its terms, heading 7326 is eliminated from consideration.

HOLDING:

Under the authority of GRI 1, the high gloss laminated steel sheets are provided for in headings 7210 or 7212, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). They are classifiable in subheading 7210.70.3000 or in subheading 7212.40.5000, HTSUSA, as appropriate. The column 1 rate of duty under these provisions 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/tata/hts.

As you may know, Presidential Proclamation 7741, dated December 4, 2003, effectively terminated the so-called 201 steel safeguard program under which additional duties on merchandise classified in the provisions listed above might have been imposed. Also, you should direct inquiries concerning possible antidumping and/or countervailing duties on this merchandise as instructed in NY I80611.

EFFECT ON OTHER RULINGS:

NY I80611, dated April 19, 2002, 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.

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

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967984
December 14, 2005
CLA-2 RR:CR:GC 967984 JAS
CATEGORY: Classification
TARIFF NO.: 7220

MR. H. YAMADA
SUMITOMO CORPORATION OF AMERICA
LOGISTICS AND INSURANCE DEPARTMENT
600 Third Avenue
New York, NY 10016-2001

RE: Vibration Damping Material; NY H84957 Revoked

DEAR MR. YAMADA:

In NY H84957, which the Director, National Commodity Specialist Division, Bureau of Customs and Border Protection (CBP), New York, issued to you on August 30, 2001, a vibration damping polymer was found to be classifiable as other articles of iron or steel, in subheading 7326.90.8586, Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

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 rulings on substantially identical merchandise was published on October 19, 2005, in the Customs Bulletin, Volume 39, Number 43. Two comments were received in response to this notice, both favoring the proposal but without elaboration.

FACTS:

The merchandise was described in NY H84957 as a laminate consisting of a stainless steel layer, a damping acrylic polymer layer and a silicone-free release polyester liner. It measures typically about ½ inch in width and is imported in coiled form. After importation, the material will be processed for application in hard disc drives where its purpose is to dampen hard disc suspension vibration during high speed rotation. The stainless steel layer predominates by weight over the acrylic polymer, but the polymer accounts for the major portion of the material cost.

ISSUE:

Whether the vibration damping material, processed as described, is a product of Chapter 72.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Chapter 72, Note 1(k), HTSUS, defines Flat-rolled products, in part, as rolled products of solid rectangular (other than square) cross section, which do not conform to the definition [of Semifinished products at (ij) above] in

the form of coils of successively superimposed layers. The vibration damping material meets these descriptions.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Heading 7220, HTSUS, provides for flat-rolled products of stainless steel, of a width of less than 600 mm. Numerous subheadings within this heading delineate the product not further worked than hot-rolled and not further worked than cold-rolled (cold-reduced). These subheadings are further delineated by width and thickness and by percentage of alloy content.

EN 73.26 indicates the heading covers all iron or steel articles other than those included in the preceding headings of Chapter 73, or covered by Note 1 to Section XV or included in Chapters 82 or 83 or more specifically covered elsewhere in the Nomenclature. In addition, General Explanatory Note (IV)(C) to Chapter 72 indicates that the finished products of that chapter may be subjected to further finishing treatments or converted into other articles. Included are surface treatments or other operations to improve the properties or appearance of the metal, protect it against rusting and corrosion, etc. Except as otherwise provided in the text of certain headings, such treatments do not affect the heading in which the goods are classified. Among these treatments or operations are lamination, at General Explanatory Note (IV)(C)(2)(g).

The process of uniting a stainless steel layer with a damping acrylic polymer layer and a silicone free release polyester liner constitutes a lamination. It is apparent that this process is designed to improve the properties or appearance of the metal so as to dedicate it as a vibration damping material. This material, as described, is provided for in subheadings of heading 7220, HTSUS, as appropriate. By its terms, heading 7326 is eliminated from consideration.

HOLDING:

Under the authority of GRI 1, the vibration damping material, as described, is provided for in headings 7220, HTSUS. It is classifiable in subheadings of that heading, as appropriate. The column 1 rate of duty under all of these provisions 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/tata/hts.

EFFECT ON OTHER RULINGS:

NY H84957, dated August 30, 2001, 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.

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

GENERAL NOTICE OF MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN SOCKS AND BOOTIES WITH ATTACHED RATTLES

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

ACTION: Notice of revocation of four ruling letters, modification of one ruling letter and revocation of treatment relating to the tariff classification of certain socks and booties with attached rattles.

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 four ruling letters, modifying one ruling letter and revoking treatment relating to the tariff classification of certain socks and booties with attached rattles. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of proposed action was published in the October 19, 2005, CUSTOMS BULLETIN, Volume 39, Number 43. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 5, 2006.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Tariff Classification and Marking Branch, at (202) 572-8821.

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 customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer

of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify New York Ruling Letter (NY) H86160, dated January 3, 2002, and revoke Port Decision (PD) D88311, dated March 3, 1999; NY F86031, dated May 3, 2000; NY A81415, dated April 5, 1996; and NY H86887, dated January 18, 2002, was published in the October 19, 2005, CUSTOMS BULLETIN, Volume 39, Number 43. One comment was received in response to this notice. In their response, the commenter raises a claim for treatment and seeks continued classification within heading 9503, HTSUS, on the basis that the merchandise described as “imported sock rattles that consist of a knit infant sock to which is attached a small toy rattle” is classifiable as “other toys” because their merchandise provides amusement by serving principally as a developmental toy for an infant, not to cover a baby’s feet. We have considered the commenter’s claim of treatment and have followed the procedures set forth in 19 C.F.R. §177.12 and 19 U.S.C. § 1625(c) with respect to treatment previously accorded to substantially similar merchandise. We note that in their response, although the commenter raises a claim of treatment, the commenter does not provide any evidence or documentation to substantiate their claim. Therefore, as their claim is unperfected, we do not accept their claim of treatment. Additionally, while we reject their claim of treatment on the basis of an unsubstantiated claim, this notice serves as a revocation of any treatment that may exist with respect to the merchandise subject to the rulings or any substantially similar merchandise. We recognize the commenter’s merchandise to be substantially similar merchandise.

As stated in the proposed notice, the modification and revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the five 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 have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, Customs and Border Protection 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 issued to a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. Any person involved with substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY H86160, dated January 3, 2002, CBP classified merchandise identified as "Whoozit Booties" in subheading 9503.90.0080, HTSUSA, which provides, in pertinent part for, other toys. In PD D88311, dated March 3, 1999, CBP classified two products identified as "Foot Rattles" in subheading 9503.90.0045, HTSUSA, which provided, in pertinent part, for other toys. In NY F86031, dated May 3, 2000, CBP classified merchandise identified as "Kids II Foot Rattles" in subheading 9503.41.0010, HTSUSA, which provided, in pertinent part for, stuffed toys representing animals or non-human creatures. In NY A81415, dated April 5, 1996, CBP classified an article described as a "Foot Rattle" in subheading 9503.90.0030, HTSUSA, which provided, in pertinent part, for other toys. In NY H86887, dated January 18, 2002, CBP classified an item identified as a "Duck Rattle Sock/Foot Jingle" in subheading 9503.90.0080, HTSUSA, which provides, in pertinent part for, other toys. Upon review of these rulings, CBP has determined that the identified merchandise was classified incorrectly. The merchandise should be classified as follows:

- In NY H86160, style 200840, the pair of "Whoozit Booties", should be classified in subheading 6209.30.3040, HTSUSA, which provides for "Babies' garments and clothing accessories: Of synthetic fibers: Other . . . Other."
- In PD D88311, the two styles of "Foot Rattles", identified as styles 2209 and 2409, should be classified in subheading 6209.30.3040, HTSUSA,
- In NY F86031 (the "Kids II Foot Rattles"), NY A81415 (the "Foot Rattle"), and NY H86887 (the "Duck Rattle Sock/Foot Jingle"), the goods should be classified in heading 6115, which covers, among other goods, socks and other hosiery and footwear without applied textile soles, knitted or crocheted. When each importer provides the fiber content of these textile articles, the eight-digit level classification and quota category number can be determined.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY H86160 and revoking PD D88311; NY F86031; NY A81415 and NY H86887, and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 967729, HQ 967731, HQ

967730, HQ 967732 and HQ 967733, set forth as Attachments A through E 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: December 12, 2005

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967729
December 12, 2005
CLA-2 RR:CTF:TCM 967729 TMF
CATEGORY: Classification
TARIFF NO.: 6209.30.3040

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

Re: Modification of New York Ruling Letter (NY) H86160, dated January 3, 2002; Classification of Whoozit Booties

DEAR MR. MARLOW:

In New York Ruling Letter (NY) H86160, issued to you January 3, 2002, this office classified merchandise identified as "Whoozit Booties," item number 200840, in subheading 9503.90.0080, HTSUSA, which provides, in pertinent part, for other toys. We have reviewed NY H86160, and with respect to the "Whoozit Booties," find it to be in error. Therefore, this ruling modifies NY H86160.

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 proposing to modify New York Ruling Letter (NY) H86160, dated January 3, 2002, was published in the October 19, 2005, CUSTOMS BULLETIN, Volume 39, Number 43. One comment was received in response to this notice.

FACTS:

NY H86160 describes the subject Whoozit Booties as follows:

Item 200840, Whoozit Booties are made of either 100% man-made fibers or 65% polyester/35% cotton fibers. Both the uppers and soles are bright[,] multicolored shinny [sic] textile. At the tip of the booties, which curves upward, is the head of a creature with a broad smile and large red nose. The head encloses a rattle. The booties serve as foot rattles. The face of the creature will be pointed toward the baby's head and will rattle when the child moves his or her legs.

ISSUE:

What is the classification of the subject merchandise?

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). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. When goods cannot be classified solely on the basis of GRI 1 and if the terms of the headings and any relative section or chapter notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Subheading 9503.90, HTSUSA, covers, in pertinent part, other toys. Chapter 95, HTSUSA, which provides essentially for toys, games and sports equipment, requires that an article classifiable therein must be designed principally to amuse. The subject merchandise is not so designed. The subject booties are designed to be worn as apparel. The amusement aspect of the merchandise is secondary to its principal function, which is to cover the feet. The goods are more accurately described as booties than as other toys, and as booties with rattles, rather than rattles with booties. Thus, they are not properly classified in subheading 9503.90.

In this case, the subject booties are made of either 100 percent man-made fibers or a blend of 65 percent polyester/35 percent cotton fibers, with uppers and soles made of bright, multicolored shiny textile. The facts do not state whether the booties have an applied textile sole, nor whether the fabric is woven or knitted. We presume that the subject booties are woven and that they lack an applied sole. Thus, we find the merchandise is classifiable as babies garments in chapter 62, specifically in subheading 6209.30.3040, which provides for "Babies' garments and clothing accessories: Of synthetic fibers: Other . . . Other."

HOLDING:

The subject "Whoozit Booties," item number 200840, are classifiable in subheading 6209.30.3040, which provides for "Babies' garments and clothing accessories: Of synthetic fibers: Other . . . Other." The general column one duty rate is 16 percent *ad valorem*, and the textile quota category is 239.

Quota/visa requirements are no longer applicable for merchandise which is the product of a 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 interna-

tional 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 and related issues, we refer you to the web site at the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

NY H86160, dated January 3, 2002 is hereby modified.

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 Trade and Facilitation Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967731
December 12, 2005
CLA-2 RR:CTF:TCM 967731 TMF
CATEGORY: Classification
TARIFF NO.: 6111.30.5050

DONNA VAN DEN BROEKE
KAT IMPORT BROKERS, INC.
514 Eccles Avenue South
San Francisco, CA 94080

Re: Revocation of Port Decision (PD) D88311, dated March 3, 1999; Classification of two styles of "Foot Rattles"

DEAR MS. VAN DEN BROEKE:

In Port Decision (PD) D88311, issued to you March 3, 1999, two styles of merchandise identified as "Foot Rattles" were classified in subheading 9503.90.0045, HTSUSA, which provided, in pertinent part, for other toys. We have reviewed PD D88311 and find it to be in error. Therefore, this ruling revokes PD D88311.

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 proposing to revoke Port Decision (PD) D88311, dated March 3, 1999, was published in the October 19, 2005, CUSTOMS BULLETIN, Volume 39, Number 43. One comment was received in response to this notice.

FACTS:

PD D88311 describes the two styles of Foot Rattles, identified as product numbers 2209 and 2409 as follows:

The products are rattles attached to infant's leg socks made of 65% polyester and 35% cotton. The rattles are in a flat textile enclosure sewn to the bottom part of the sock. The attachments have either "Winnie the Pooh" or a "Sesame Street" character screen printed on the front side of the rattle enclosure. When placed on the infant's foot the movement of the leg will cause the rattle to make noise.

ISSUE:

What is the classification of the subject merchandise?

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). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. When goods cannot be classified solely on the basis of GRI 1 and if the terms of the headings and any relative section or chapter notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Subheading 9503.90, HTSUSA, covers, in pertinent part, other toys. Chapter 95, HTSUSA, which provides essentially for toys, games and sports equipment, requires that an article classifiable therein must be designed principally to amuse. The subject merchandise is not so designed. The subject booties are designed to be worn as apparel. The amusement aspect of the merchandise is secondary to its principal function, which is to cover the feet. The goods are more accurately described as booties than as other toys, and as booties with rattles, rather than rattles with booties. Thus, they are not properly classified in subheading 9503.90.

In this case, the material comprising the subject socks is made of a blend of 65 percent polyester/35 percent cotton fibers. The facts do not state whether the socks have an applied sole, nor whether the material is woven or knitted. We presume that the subject socks are knitted and that they lack an applied sole. Therefore, we find the merchandise to be classifiable as babies garments in chapter 61, specifically subheading 6111.30.5050, HTSUSA, which provides for "Babies' garments and clothing accessories: knitted or crocheted: Of synthetic fibers: Other . . . Other: Babies' socks and booties."

HOLDING:

The two styles of "Foot Rattles", identified as styles 2209 and 2409, are classifiable in subheading 6111.30.5050, HTSUSA, which provides for "Babies' garments and clothing accessories: knitted or crocheted: Of synthetic fibers: Other . . . Other: Babies' socks and booties." The general column one duty rate is 16 percent. The textile quota category is 239.

Quota/visa requirements are no longer applicable for merchandise which is the product of a 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 ap-

plicable 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 and related issues, we refer you to the web site at the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

PD D88311, dated March 3, 1999, is hereby revoked.

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

Gail A. Hamill for MYLES B. HARMON,
Director;
Commercial Trade and Facilitation Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967730
December 12, 2005
CLA-2 RR:CTF:TCM 967730 TMF
CATEGORY: Classification
TARIFF NO.: 6111

M. LANE
140 Route 17 North, Suite 269
Paramus, NJ 07652

Re: Revocation of New York Ruling Letter (NY) F86031, dated May 3, 2000;
Classification of "Kids II Foot Rattles"

DEAR MR. LANE:

In New York Ruling Letter (NY) F86031, issued to you May 3, 2000, this office classified merchandise identified as "Kids II Foot Rattles" in subheading 9503.41.0010, HTSUSA, which provides, in pertinent part for stuffed toys representing animals or non-human creatures. We have reviewed NY F86031 and with respect to the "Kids II Foot Rattles," find it to be in error. Therefore, this ruling revokes NY F86031.

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 proposing to revoke New York Ruling Letter (NY) F86031, dated May 3, 2000, was published in the October 19, 2005, CUSTOMS BULLETIN, Volume 39, Number 43. One comment was received in response to this notice.

FACTS:

NY F86031 describes the subject "Kids II Foot Rattles" as follows:

The item will be packaged on a cardboard insert in a clear plastic bag. The cardboard insert describes the article as "Kids II Foot Rattles". The article is a pair of textile socks with a miniature stuffed dog perma-

nently attached to each sock. Each stuffed toy dog has a rattle sewn into it that rattles when the baby wearing the socks kicks his/her feet.

ISSUE:

What is the classification of the subject merchandise?

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). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. When goods cannot be classified solely on the basis of GRI 1 and if the terms of the headings and any relative section or chapter notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Subheading 9503.41, HTSUSA, covers, in pertinent part, stuffed toys representing animals or non-human creatures. Chapter 95, HTSUSA, which provides essentially for toys, games and sports equipment, requires that an article classifiable therein must be designed principally to amuse. The subject merchandise is not so designed. The subject socks are designed to be worn as apparel. The amusement aspect of the merchandise is secondary to its principal function, which is to cover the feet. The goods are more accurately described as socks than as stuffed toys representing animals or non-human creatures, and as socks with rattles, rather than rattles with socks. Thus, they are not properly classified in subheading 9503.41.

In this case, the facts of NY F86031 simply state that the merchandise is made of "textile", without specification as to the material's fiber content, whether they are woven or knitted, or possess an applied sole. Therefore, we presume that the socks do not have an applied sole, that they are knitted, and we find that they are classifiable in chapter 61, specifically under heading 6111.

Therefore, in light of the above analysis, the merchandise is classifiable in chapter 61, specifically under heading 6111. If the fiber content is determined to be of cotton, the subject socks are classifiable in subheading 6111.20.6050; if of a synthetic fiber, they are classifiable in subheading 6111.30.5050; or if of an artificial fiber, they are classifiable in subheading 6111.90.5050, HTSUSA. Once this information is provided by the importer, classification at the eight-digit level can be determined.

HOLDING:

The subject "Kids II Foot Rattles" are classifiable in heading 6111, which covers babies' garments and clothing accessories, knitted or crocheted. When the importer provides the fiber content of the textile material comprising the article, the eight-digit level classification and quota category number can be determined.

Quota/visa requirements are no longer applicable for merchandise which is the product of a World Trade Organization (WTO) member countries. The textile category number 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 and related issues, we refer you to the web site at the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

NY F86031, dated May 3, 2000 is hereby revoked.

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

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Trade and Facilitation Division.



[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967732
December 12, 2005
CLA-2 RR:CTF:TCM 967732 TMF
CATEGORY: Classification
TARIFF NO.: 6111

MR. ROBERT M. SHREVE
MARE-SHREVE & ASSOCIATES, INC.
615 Second Avenue
Seattle, Washington 98104

Re: Revocation of New York Ruling Letter (NY) A81415, dated April 5, 1996;
Classification of a "Foot Rattle"

DEAR MR. SHREVE:

In New York Ruling Letter (NY) A81415, issued to you April 5, 1996, merchandise identified as a "Foot Rattle" was classified in subheading 9503.90.0030, HTSUSA, which essentially provided for other toys. We have reviewed NY A81415 and find it to be in error. Therefore, this ruling revokes NY A81415.

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 proposing to revoke New York Ruling Letter (NY) A81415, dated April 5, 1996, was published in the October 19, 2005, CUSTOMS BULLETIN, Volume 39, Number 43. One comment was received in response to this notice.

FACTS:

NY A81415 describes the subject "Foot Rattle" as follows:

The item consists of an infant sized sock with a rattle sewn to the instep area. The rattle itself is concealed within a lightly padded textile form

that is printed with the face of an animal. The article provides a stimulating and entertaining form of amusement to an infant.

ISSUE:

What is the classification of the subject merchandise?

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). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. When goods cannot be classified solely on the basis of GRI 1 and if the terms of the headings and any relative section or chapter notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Subheading 9503.90, HTSUSA, covers, in pertinent part, other toys. Chapter 95, HTSUSA, which provides essentially for toys, games and sports equipment, requires that an article classifiable therein must be designed principally to amuse. The subject merchandise is not so designed. The subject socks are designed to be worn as apparel. The amusement aspect of the merchandise is secondary to its principal function, which is to cover the feet. The goods are more accurately described as socks than as other toys, and as socks with rattles, rather than rattles with socks. Thus, they are not properly classified in subheading 9503.90.

In this case, the facts of NY A81415 do not indicate whether the subject socks are woven or knitted, whether they have an applied sole, nor do they provide any information about fiber content. We presume that they are knitted, that they do not have an applied sole, and find that they are classifiable in chapter 61, specifically heading 6111. If the fiber content is determined to be of cotton, the subject socks are classifiable in subheading 6111.20.6050; if of a synthetic fiber, they are classifiable in subheading 6111.30.5050; or if of an artificial fiber, they are classifiable in subheading 6111.90.5050, HTSUSA. Once this information is provided by the importer, classification at the eight-digit level can be determined.

HOLDING:

The subject "Foot Rattle" is classifiable in heading 6111, which covers babies' garments and clothing accessories, knitted or crocheted. When the importer provides the fiber content of the textile material comprising the article, the eight-digit level classification and quota category number can be determined.

Quota/visa requirements are no longer applicable for merchandise which is the product of a World Trade Organization (WTO) member countries. The textile category number 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 tex-

tile safeguard actions and related issues, we refer you to the web site at the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

NY A81415, dated April 5, 1996 is hereby revoked.

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

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Trade and Facilitation Division.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967733
December 12, 2005
CLA-2 RR:CTF:TCM 967733 TMF
CATEGORY: Classification
TARIFF NO.: 6111

MS. GENEVIEVE M. RAFTER KEDDY
J.M. CUSTOMS BROKERS, INC.
147-55 175th Street
Jamaica, NY 11734

Re: Revocation of New York Ruling Letter (NY) H86887, dated January 18, 2002; Classification of a "Duck Rattle Sock/Foot Jingle"

DEAR MS. RAFTER KEDDY:

In New York Ruling Letter (NY) H86887, issued to you January 18, 2002, merchandise identified as "Duck Rattle Sock/Foot Jingle" was classified in subheading 9503.90.0080, HTSUSA, which essentially provides for other toys. We have reviewed NY H86887 and find it to be in error. Therefore, this ruling revokes NY H86887.

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 proposing to revoke New York Ruling Letter (NY) H86887, dated January 18, 2002, was published in the October 19, 2005, CUSTOMS BULLETIN, Volume 39, Number 43. One comment was received in response to this notice.

FACTS:

NY H86887 describes the subject article as follows:

Duck Rattle Sock/Foot Jingle, consists of an infant sized sock with a rattle sewn to the front top of the sock. The rattle itself is concealed within a lightly padded cotton duck. The article provides a stimulating and entertaining form of amusement to an infant.

ISSUE:

What is the classification of the subject merchandise?

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). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. When goods cannot be classified solely on the basis of GRI 1 and if the terms of the headings and any relative section or chapter notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Subheading 9503.90, HTSUSA, covers, in pertinent part, other toys. Chapter 95, HTSUSA, which provides essentially for toys, games and sports equipment, requires that an article classifiable therein must be designed principally to amuse. The subject merchandise is not so designed. The subject socks are designed to be worn as apparel. The amusement aspect of the merchandise is secondary to its principal function, which is to cover the feet. The goods are more accurately described as socks than as other toys, and as socks with rattles, rather than rattles with socks. Thus, they are not properly classified in subheading 9503.90.

In this case, the facts of NY H86887 do not indicate whether the subject socks are woven or knitted, whether they have an applied sole, nor do they provide any information about fiber content. We presume that they are knitted, that they do not have applied soles, and find that they are classifiable in chapter 61, specifically heading 6111. If the fiber content is determined to be of cotton, the subject socks are classifiable in subheading 6111.20.6050; if of a synthetic fiber, they are classifiable in subheading 6111.30.5050; or if of an artificial fiber, they are classifiable in subheading 6111.90.5050, HTSUSA. Once this information is provided by the importer, classification at the eight-digit level can be determined.

HOLDING:

The subject "Duck Rattle Sock/Foot Jingle" is classifiable in heading 6111, which covers babies' garments and clothing accessories, knitted or crocheted. When the importer provides the fiber content of the textile article, the eight-digit level classification and quota category number can be determined.

Quota/visa requirements are no longer applicable for merchandise which is the product of a World Trade Organization (WTO) member countries. The textile category number 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 and related issues, we refer you to the web site at the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

NY H86887, dated January 18, 2002 is hereby revoked

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

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial Trade and Facilitation Division.

19 CFR PART 177

**PROPOSED MODIFICATION OF ONE RULING LETTER,
REVOCATION OF TWO RULING LETTERS, AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN BRAIDS IN THE
PIECE**

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

ACTION: Notice of proposed modification of a tariff classification ruling letter, revocation of two ruling letters, and revocation of treatment relating to the classification of certain braids in the piece.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter and revoke two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain braids in the piece. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before February 3, 2006.

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

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Tariff Classification and Marking Branch, at (202) 572-8883.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify one ruling letter and revoke two ruling letters relating to the tariff classification of certain braids in the piece. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) H87352, dated February 19, 2002 (Attachment A) and the revocation of NY J82797, dated April 10, 2003 (Attachment B) and NY J82793, dated April 9, 2003 (Attachment C), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should advise CBP during this notice

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

In NY H87352, NY J82797, and J82793, CBP classified several articles of braided construction incorporating metallic strip in heading 5605, HTSUS, which provides for: "Metalized yarn, whether or not gimped, being textile yarn, or strip of the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal." Based on our review of each ruling, the HTSUS, and the Explanatory Notes for Heading 5605 and Heading 5808, we now believe that these articles are classified in heading 5808, which provides for: "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY H87352, revoke NY J82797 and NY J82793, and revoke any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analyses set forth in proposed Headquarters Ruling Letter (HQ) 967828 (Attachment D), HQ 967829 (Attachment E), and HQ 967830 (Attachment F), respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: December 16, 2005

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT A]

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

NY H87352

February 19, 2002

CLA-2-56:RR:NC:N3:351 H87352

CATEGORY: Classification

TARIFF NO.: 5605.00.1000, 5605.00.9000,
5808.10.7000, 5808.10.9000

JANET L. TELLES
GLOBAL COMPLIANCE MANAGER
SMITH INTERNATIONAL ENTERPRISES, LTD.
*20600 Chagrin Blvd., Suite 200
Shaker Heights, Ohio 44122*

RE: The tariff classification of twine, yarns, and trimmings from Hong Kong.

DEAR MS. TELLES:

In your letter dated January 30, 2002, you requested a tariff classification ruling.

You submitted three groups of samples and state that they will be imported in rolls of 150 yards.

You have stated that certain of the items which are the subject of this ruling contain a percentage by weight of metalized yarns. Please note that a yarn that contains any amount of metal is regarded in its entirety as "metalized yarn" for tariff purposes. Thus, the determination of which textile material predominates by weight is based not on the actual weight of metal, but on the actual weight of all yarns that contain metal. We have not verified the fiber content through laboratory testing, and will assume that your stated fiber content is correct. Upon importation, however, if the fiber content is found by laboratory testing or other means to be different from that stated in this ruling, then this ruling does not apply.

In all cases where metallic strips are used, the strips meet the tariff definition for textile.

In group one are KS3, KS6, KS7, and KS9. They are described as polypropylene and metallic. KS3 and KS6 are braided yarns. KS3 has four polypropylene multifilament strands braided with two metallic strips. KS6 has four multifilament strands of polypropylene braided with four multi-ply strands of multifilament yarn gimped (that is, wrapped) with metallic strips. KS7 is a 3.5mm-wide flat braid with two braid cores braided together with nine gimped yarns; three of these yarns are metallic. KS9 is a 7mm-wide flat braid of three sets of three gimped yarns each; six of the yarns are metallic.

The second group includes KS1, 2, and 5. KS1 is a three-ply twisted yarn; each ply is approximately 15 multifilament strands of yarn gimped with metalized textile strip. KS2 is a braided yarn composed of multiple multifilament strands of textile and metallic textile strip. KS5 is a flat braided multifilament yarn gimped with metallic strip.

The third group is said to be of polypropylene. 146YP is a three-ply twisted cord measuring approximately 4mm in diameter. KS4 is a 2.5mm-wide flat braid with a slightly thicker yarn incorporated along both edges

fashioned to give a slight picot edge. KS8 is a 4mm-wide flat braid similar to KS7 with a double core, but the braiding yarns are plain (not gimped), and there are no metallic yarns.

The applicable subheading for KS2 and 3 will be 5605.00.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal: metal coated or metal laminated man-made filament or strip or the like, ungimped, and untwisted or with twist of less than 5 turns per meter. The duty rate will be nine percent ad valorem.

The applicable subheading for KS1, 5, and 6 will be 5605.00.9000, HTS, which provides for metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal; other.

The applicable subheading for KS4 and 8 will be 5808.10.7000, HTS, which provides for braids in the piece; other; of cotton or man-made fibers. The duty rate will be 7.6 percent ad valorem.

The applicable subheading for KS7 and 9 will be 5808.10.9000, HTS, which provides for braids in the piece; other; other. The rate of duty will be 5 percent ad valorem.

The applicable subheading for 146YP will be 5607.49.1500, HTS, which provides for twine, cordage, ropes and cables . . . of polyethylene or polypropylene, other, other, not braided or plaited, measuring less than 4.8-mm in diameter. The duty rate will be 7.2 percent ad valorem.

Those items classifiable in subheading 5605.00.9000, HTS, (that is, KS1, 5, and 6) fall within textile category designation 201. Based upon international textile trade agreements products of Hong Kong are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

Your inquiry does not provide enough information for us to give a classification ruling on P2, WF#6, WF#5, UN#1 (both Pastel and Bright), and Multi Color Block. Your request for a classification ruling for P2, WF#6, WF#5, and UN#1 should include the weight of each with the support (spool, card, reel, etc.) in the 150-yard rolls on which you say they will be imported. For Multi Color Block we need to know on what type of machine it was made, whether it is a warp or weft knit, and the weight of the 150-yd. roll without the support.

When this information is available, you may wish to consider resubmission of your request. We are retaining the samples for our files. If you decide to resubmit your request, please include a copy of this letter.

In the future, please limit your requests to five items.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at 646-733-3102.

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

[ATTACHMENT B]

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

NY J82797

April 10, 2003

CLA-2-56:RR:NC:N3:351 J82797

CATEGORY: Classification

TARIFF NO.: 5605.00.9000

MS. YOLANDA S. MASSEY
IMPORT MANAGER
MICHAELS
8000 Bent Brush Drive
Irving, TX 75063

RE: The tariff classification of decorative metalized yarn from Taiwan.

DEAR MS. MASSEY:

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

You submitted three samples of your Vendor Style # MXT-12209, designated A-C. We shall first discuss A and B.

Sample A is described as 100% polyester. It is composed of six gimped strands (a multifilament core wrapped by a strip) mixed with numerous strips. They are all braided together. It is flat and measures 1/8" across.

Sample B is a braided nylon core sheathed in braided textile strip. It measures 1/16" in diameter.

The metallic strip in each is considered textile for tariff purposes. Please note that a yarn that contains any amount of metal is regarded in its entirety as "metalized yarn" for tariff purposes. Thus, the determination of which textile material predominates by weight is based not on the actual weight of metal, but on the actual weight of all yarns that contain metal. MXT-12209 A and B are considered to be 100% metallic.

Your Import Quote Sheet shows the classification of A and B as heading 5808, Harmonized Tariff Schedule of the United States Annotated (HTSUSA) which provides for "braids in the piece." However, Table I of the Explanatory Notes to Section XI, entitled "Classification of yarns, twine, cordage, rope and cables of textile material," states that metalized yarns are classified in heading 5605 "in all cases."

The applicable subheading for this product will be 5605.00.9000, HTS, which provides for metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in

the form of thread, strip or powder or covered with metal; other. The general rate of duty will be 13.4 percent ad valorem.

This product falls within textile category designation 201. Based upon international textile trade agreements products of Taiwan are currently subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance that is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

Your inquiry does not provide enough information for us to give a classification ruling on sample C. Your request for a classification ruling must include the type of machine it is made on. When this information is available, you may wish to consider resubmission of your request.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at 646-733-3102.

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

[ATTACHMENT C]

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

NY J82793
April 9, 2003
CLA-2-56:RR:NC:N3:351 J82793
CATEGORY: Classification
TARIFF NO.: 5605.00.9000

MS. YOLANDA S. MASSEY
IMPORT MANAGER
MICHAELS
8000 Bent Brush Drive
Irving, TX 75063

RE: The tariff classification of decorative metalized yarns from Taiwan.

DEAR MS. MASSEY:

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

You submitted three samples of your Vendor Style # MXT-12210, designated A and B. They are the type of fancy cord used to wrap gifts and for

similar uses. They are identical except for color. Both are composed of a braided polyester core sheathed in a braid composed of six gimped strands (a multifilament core wrapped by a metallic strip) mixed with numerous metallic strips, all braided together.

Sample A is gold, green, and red; sample B is silver and blue. They measure 1/8" in diameter.

The metallic strip in each is considered textile for tariff purposes. Please note that a yarn that contains any amount of metal is regarded in its entirety as "metalized yarn" for tariff purposes. Thus, the determination of which textile material predominates by weight is based not on the actual weight of metal, but on the actual weight of all yarns that contain metal. MXT-12210 A and B are considered to be 100% metallic.

Your Import Quote Sheet shows the classification of A and B as heading 5607, Harmonized Tariff Schedule of the United States Annotated (HTSUSA) which provides for twine, cordage, ropes and cables. However, Table I of the Explanatory Notes to Section XI, entitled "Classification of yarns, twine, cordage, rope and cables of textile material," states that metalized yarns are classified in heading 5605 "in all cases."

The applicable subheading for this product will be 5605.00.9000, HTS, which provides for metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal; other. The general rate of duty will be 13.4 percent ad valorem.

This product falls within textile category designation 201. Based upon international textile trade agreements products of Taiwan are currently subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Mitchel Bayer at 646-733-3102.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967828
CLA-2 RR:CR:TE 967828 BtB
CATEGORY: Classification
TARIFF NO.: 5808.10.9000

MS. YOLANDA S. MASSEY
IMPORT MANAGER
MICHAELS STORES, INC.
8000 Bent Branch Dr.
Irving, Texas 75063

Re: Classification of braid in the piece; NY J82797 revoked

DEAR MS. MASSEY:

On April 10, 2003, U.S. Customs and Border Protection (CBP) issued New York Ruling Letter (NY) J82797 to Michaels Stores, Inc. ("Michaels"). In NY J82797, CBP classified two articles identified as Vendor Style # MXT-12209, Sample A and Sample B, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Upon review of that ruling, we have found that the classifications provided for these articles are incorrect. This ruling, Headquarters Ruling Letter (HQ) 967828, hereby revokes NY J82797 and sets forth the correct classification of those samples.

FACTS:

In NY J82797, Sample A and Sample B were described as follows:

Sample A is described as 100% polyester. It is composed of six gimped strands (a multifilament core wrapped by a strip) mixed with numerous strips. They are all braided together. It is flat and measures 1/8" across.

Sample B is a braided nylon core sheathed in braided textile strip. It measures 1/16" in diameter.

The strip in Sample A and Sample B is metallic. Both articles are made in Taiwan. In NY J82797, CBP classified Sample A and Sample B under sub-heading 5605.00.9000, HTSUSA, which provides for "Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal: Other."

ISSUE:

Whether Sample A and Sample B were properly classified in heading 5605, HTSUSA, as metalized yarns or are they classified as braid in the piece in heading 5808, HTSUSA.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." If 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, in order.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Heading 5605, HTSUSA, provides for "Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal." The ENs to heading 5605 state that, among other articles, the heading covers:

- (1) **Yarn consisting of any textile material (including monofilament, strip and the like and paper yarn) combined with metal thread or strip**, whether obtained by a process of twisting, cabling or by gimping, whatever the proportion of the metal present. . . .

Braided constructions are not provided for in the terms of heading 5605 or mentioned in the ENs to that heading.

Heading 5808, HTSUSA, however, does provide for braided constructions. In its entirety, the heading provides for: "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles." The ENs to heading 5808 state that the products classified in the heading, among other articles, include:

- (1) **Flat or tubular braids.**

These are obtained by interlacing diagonally yarns, or the monofilament, strip and the like of Chapter 54.

* * * * *

Braid is made on special machines known as braiding or spindle machines.

Varieties of braid include lacing (e.g., for boot or shoe laces), piping, soutache, ornamental cords, braided galloons, etc. Tubular braid may have a textile core.

Braid is used for edging or ornamenting certain articles of apparel (e.g., decorative trim and piping) or furnishing articles (e.g., tiebacks for curtains), as sheathing for electrical wiring, for the manufacture of certain shoes laces, anorak or track suit cords, cord belts for dressing gowns, etc.

The construction of Sample A or Sample B is not obtained by twisting, cabling or by gimping. Rather, both are of braided construction. The articles are not yarns, but braids in the piece. They are, therefore, classified pursuant to GRI 1, under heading 5808, HTSUSA, which specifically provides for such articles. Both samples are classified in subheading 5808.10, which provides for braids in the piece.

We note that while Sample A and Sample B may not be strictly decorative, they are not as tightly plaited and compact as the braided articles of head-

ing 5607, HTSUSA, and are not suitable for the uses set forth for articles classified in that heading (as twine, cordage, ropes or cables). *See generally*, HQ 965230, dated June 3, 2002.

While a yarn that contains any amount of metal is regarded in its entirety as a "metalized yarn," a braid of heading 5808, HTSUSA, that contains any amount of metal is not regarded in its entirety as being of metalized yarn. The metallic strip in Sample A and Sample B is considered textile for tariff purposes because it meets the dimensional requirements of man-made fiber textile strips set forth in Note 1(g) to Section XI, HTSUSA.

As the braids at issue are classified under heading 5808, HTSUSA, and contain two or more textile materials, Subheading Note 2 to Section XI, HTSUSA, is applicable to them. Subheading Note 2, in pertinent part, states:

2. (A) Products of chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of chapters 50 to 55 or of heading 5809 consisting of the same textile materials.
- (B) For the application of this rule:
 - (a) Where appropriate, only the part which determines the classification under general interpretative rule 3 shall be taken into account[.]

Note 2 to Section XI, HTSUSA, in turn, states:

Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material.

Where braids in the piece of heading 5808, HTSUSA, are composed only of interlaced textile material, the braid is akin to fabric of headings 50 to 55 and will be classified according to the textile material which predominates by weight pursuant to Note 2 to Section XI, HTSUSA. However, where braids in the piece of heading 5808, HTSUSA, are composed of an exterior braid of one material around a core of a different material, it is appropriate, pursuant to Subheading Note 2 to Section XI, HTSUSA, to take into account only the part which determines the classification of the braid under GRI 3. *See* HQ 957751, dated June 6, 1995. It would be in error to use chief weight alone to decide classification of the braid. *Id.* Such braids constitute composite goods. GRI 3(b) directs that for a composite good consisting of different materials, which cannot be classified by reference to GRI 3(a), classification shall be according to the component that imparts the essential character of the good.

In the case at hand, Sample A is composed only of metalized material. Note that the gimped strands in the construction, individually, are considered metalized yarns because their multifilament core is wrapped by metalized strip. Consequently, Sample A is classified in subheading 5808.10.9000, HTSUSA, which provides for: "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles: Braids in the piece: Other: Other."

Sample B, however, is composed of an exterior braid of metallic strip around a nylon core. Pursuant to Subheading Note 2 to Section XI,

HTSUSA, it is appropriate to take into account only the part which determines the classification of the braid under GRI 3. The braid cannot be classified pursuant to GRI 3(a). Under GRI 3(b), the exterior metallic strip imparts the essential character of the good. Sample B, therefore, is also classified in subheading 5808.10.9000, HTSUSA.

HOLDING:

The articles identified as Sample A and Sample B in NY J82797 are classified in subheading 5808.10.9000, HTSUSA, which provides for: "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles: Braids in the piece: Other: Other." The applicable column one, general duty rate under the 2005 HTSUSA is 4.2 percent *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 J82797, dated April 10, 2003, is hereby revoked.

MYLES B. HARMON,

Director,

Commercial & Trade Facilitation Division.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967829
CLA-2 RR:CR:TE 967829 BtB
CATEGORY: Classification
TARIFF NO.: 5808.10.9000

MS. YOLANDA S. MASSEY
IMPORT MANAGER
MICHAELS STORES, INC.
8000 Bent Branch Dr.
Irving, Texas 75063

Re: Classification of braid in the piece from Taiwan; NY J82793 revoked

DEAR MS. MASSEY:

On April 9, 2003, U.S. Customs and Border Protection (CBP) issued New York Ruling Letter (NY) J82793 to Michaels Stores, Inc. ("Michaels"). In NY J82793, CBP classified an article from Taiwan identified as "Style MXT-12210" under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Upon review of that ruling, we have found that the classification provided for this article is incorrect. This ruling, Headquarters Ruling Letter (HQ) 967829, hereby revokes NY J82793 and sets forth the correct classification of the article.

FACTS:

You submitted several samples of Style MXT-12210. The samples are identical except for color. They are the type of fancy cord used to wrap gifts and for similar uses.

In NY J82793, the Style MXT-12210 samples are described as: “. . . composed of a braided polyester core sheathed in a braid composed of six gimped strands (a multifilament cord wrapped by a metallic strip) mixed with numerous metallic strips, all braided together. . . . They measure 1/8” in diameter.” While not stated in the ruling, Style MXT-12210 is not suitable for making or ornamenting headwear.

In NY J82793, CBP classified style Style MXT-12210 under subheading 5605.00.9000, HTSUSA, which provides for “Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal: Other.”

ISSUE:

Whether the article identified as Style MXT-12210 is classified in heading 5605, HTSUSA, as a metalized yarn or is it classified as a braid in the piece in heading 5808, HTSUSA.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” If 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, in order.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Heading 5605, HTSUSA, provides for “Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal.” The ENs to heading 5605 state that, among other articles, the heading covers:

- (1) **Yarn consisting of any textile material (including monofilament, strip and the like and paper yarn) combined with metal thread or strip**, whether obtained by a process of twisting, cabling or by gimping, whatever the proportion of the metal present. . . .

Braided constructions are not provided for in the terms of heading 5605 or mentioned in the ENs to that heading.

Heading 5808, HTSUSA, however, does provide for braided constructions. In its entirety, the heading provides for: “Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted;

tassels, pompons and similar articles.” The ENs to heading 5808 state that the products classified in the heading, among other articles, include:

(1) **Flat or tubular braids.**

These are obtained by interlacing diagonally yarns, or the monofilament, strip and the like of Chapter 54.

* * * * *

Braid is made on special machines known as braiding or spindle machines.

Varieties of braid include lacing (e.g., for boot or shoe laces), piping, soutache, ornamental cords, braided galloons, etc. Tubular braid may have a textile core.

Braid is used for edging or ornamenting certain articles of apparel (e.g., decorative trim and piping) or furnishing articles (e.g., tiebacks for curtains), as sheathing for electrical wiring, for the manufacture of certain shoes laces, anorak or track suit cords, cord belts for dressing gowns, etc.

Style MXT-12210's construction is not obtained by twisting, cabling or by gimping. Rather, it is of braided construction. The article is not yarn, but braid in the piece. It is, therefore, classified pursuant to GRI 1, under heading 5808, HTSUSA, which specifically provides for such articles.

We note that while Style MXT-12210 may not be strictly decorative, it is not as tightly plaited and compact as the braided articles of heading 5607, HTSUSA, and is not suitable for the uses set forth for articles classified in that heading (as twine, cordage, ropes or cables). *See generally*, HQ 965230, dated June 3, 2002.

While a yarn that contains any amount of metal is regarded in its entirety as a “metalized yarn,” a braid of heading 5808, HTSUSA, that contains any amount of metal is not regarded in its entirety as being of metalized yarn. The metallic strip in Style MXT-12210 is considered textile for tariff purposes because it meets the dimensional requirements of man-made fiber textile strips set forth in Note 1(g) to Section XI, HTSUSA.

As Style MXT-12210 is classified under heading 5808, HTSUSA, and contains two or more textile materials, Subheading Note 2 to Section XI, HTSUSA, is applicable to it. Subheading Note 2, in pertinent part, states:

2. (A) Products of chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of chapters 50 to 55 or of heading 5809 consisting of the same textile materials.
- (B) For the application of this rule:
 - (a) Where appropriate, only the part which determines the classification under general interpretative rule 3 shall be taken into account[.]

Note 2 to Section XI, HTSUSA, in turn, states:

Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if con-

sisting wholly of that one textile material which predominates by weight over each other single textile material.

Where braids in the piece of heading 5808, HTSUSA, are composed only of interlaced textile material, the braid is akin to fabric of headings 50 to 55 and will be classified according to the textile material which predominates by weight pursuant to Note 2 to Section XI, HTSUSA. However, where braids in the piece of heading 5808, HTSUSA, are composed of an exterior braid of one material around a core of a different material, it is appropriate, pursuant to Subheading Note 2 to Section XI, HTSUSA, to take into account only the part which determines the classification of the braid under GRI 3. See HQ 957751, dated June 6, 1995. It would be in error to use chief weight alone to decide classification of the braid. *Id.* Such braids constitute composite goods. GRI 3(b) directs that for a composite good consisting of different materials, which cannot be classified by reference to GRI 3(a), classification shall be according to the component that imparts the essential character of the good.

In the case at hand, Style MXT-12210 is composed of metallic strands and strip around a polyester core. Pursuant to Subheading Note 2 to Section XI, HTSUSA, it is appropriate to take into account only the part which determines the classification of the braid under GRI 3. The braid cannot be classified pursuant to GRI 3(a). Under GRI 3(b), the exterior metallic material imparts the essential character of the good. Style MXT-12210, therefore, is classified in subheading 5808.10.9000, HTSUSA.

HOLDING:

The article identified as Style MXT-12210 in NY J82793 is classified in subheading 5808.10.9000, HTSUSA, which provides for: "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles: Braids in the piece: Other: Other." The applicable column one, general duty rate under the 2005 HTSUSA is 4.2 percent *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 J82793, dated April 9, 2003, is hereby revoked.

MYLES B. HARMON,
Director,
Commercial & Trade Facilitation Division.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967830
CLA-2 RR:CR:TE 967830 BtB
CATEGORY: Classification
TARIFF NO.: 5808.10.7000, 5808.10.9000

JANET L. TELLES
GLOBAL COMPLIANCE MANAGER
SMITH INTERNATIONAL ENTERPRISES, LTD.
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Suite 200
Shaker Heights, OH 44122

Re: Classification of braid in the piece from Hong Kong; NY H87352 modified

DEAR MS. TELLES:

On February 19, 2002, U.S. Customs and Border Protection (CBP) issued New York Ruling Letter (NY) H87352 to you. In NY H87352, CBP classified several samples of twine, yarns, and trimmings from Hong Kong under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Upon review of that ruling, we have found that the classifications provided for several samples are incorrect. This ruling, Headquarters Ruling Letter (HQ) 967830, hereby modifies NY H87352 and sets forth the correct classification of those samples.

FACTS:

In NY H87352, the samples at issue were identified as KS2, KS3, KS5 and KS6. In the ruling, KS3 and KS6 were described as:

They are described as polypropylene and metallic. KS3 and KS6 are braided yarns. KS3 has four polypropylene multifilament strands braided with two metallic strips. KS6 has four multifilament strands of polypropylene braided with four multi-ply strands of multifilament yarn gimped (that is, wrapped) with metallic strips.

Also in NY H87352, KS2 was described as: ". . . a braided yarn composed of multiple multifilament strands of textile and metallic textile strip." KS5 was described as: ". . . a flat braided multifilament yarn gimped with metallic strip." While not stated in NY H87352, KS5 has a core composed of four twisted single multifilament yarns, which are laid out flat in parallel fashion. Its sheath is composed of sixteen gimped metallic yarns (each is a single multifilament yarn gimped, or wrapped, with metallic strip). These metallic yarns are braided around the core yarns, which are laid out parallel to each other, creating the flat braid.

In NY H87352, CBP classified KS2 and KS3 under subheading 5605.00.1000, HTSUSA, which provides for "Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal: Metal coated or metal laminated man-made filament or strip or the like, ungimped, and untwisted or with twist of less than 5 turns per meter." Also in NY H87352, CBP classified KS5 and KS6 under subheading 5605.00.9000, HTSUSA, which provides for "Metalized yarn, whether or not

gimped, being textile yarn, or strip of the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal: Other.”

ISSUE:

Whether the samples identified as KS2, KS3, KS5 and KS6 are classified in heading 5605, HTSUSA, as metalized yarns or are they classified as braid in the piece in heading 5808, HTSUSA.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” If 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, in order.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Heading 5605, HTSUSA, provides for “Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal.” The ENs to heading 5605 state that, among other articles, the heading covers:

- (1) **Yarn consisting of any textile material (including monofilament, strip and the like and paper yarn) combined with metal thread or strip**, whether obtained by a process of twisting, cabling or by gimping, whatever the proportion of the metal present. . . .

Braided constructions are not provided for in the terms of heading 5605 or mentioned in the ENs to that heading.

Heading 5808, HTSUSA, however, does provide for braided constructions. In its entirety, the heading provides for: “Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles.” The ENs to heading 5808 state that the products classified in the heading, among other articles, include:

- (1) **Flat or tubular braids.**

These are obtained by interlacing diagonally yarns, or the monofilament, strip and the like of Chapter 54.

* * * * *

Braid is made on special machines known as braiding or spindle machines.

Varieties of braid include lacing (e.g., for boot or shoe laces), piping, soutache, ornamental cords, braided galloons, etc. Tubular braid may have a textile core.

Braid is used for edging or ornamenting certain articles of apparel (e.g., decorative trim and piping) or furnishing articles (e.g., tiebacks for curtains), as sheathing for electrical wiring, for the manufacture of certain shoes laces, anorak or track suit cords, cord belts for dressing gowns, etc.

The construction of the samples identified as KS2, KS3, KS5 and KS6 is not obtained by twisting, cabling or by gimping. Rather, all of these samples are of braided construction. The articles are not yarns, but braids in the piece. They are, therefore, classified pursuant to GRI 1, under heading 5808, HTSUSA, which specifically provides for such articles. Each of the samples is classified in subheading 5808.10, which provides for braids in the piece.

We note that while the samples identified as KS2, KS3, KS5 and KS6 may not be strictly decorative, they are not as tightly plaited and compact as the braided articles of heading 5607, HTSUSA, and are not suitable for the uses set forth for articles classified in that heading (as twine, cordage, ropes or cables). *See generally*, HQ 965230, dated June 3, 2002.

While a yarn that contains any amount of metal is regarded in its entirety as a "metalized yarn," a braid of heading 5808, HTSUSA, that contains any amount of metal is not regarded in its entirety as being of metalized yarn. The metallic strip in each of the constructions is considered textile for tariff purposes because it meets the dimensional requirements of man-made fiber textile strips set forth in Note 1(g) to Section XI, HTSUSA.

As the braids at issue are classified under heading 5808, HTSUSA, and contain two or more textile materials, Subheading Note 2 to Section XI, HTSUSA, is applicable to them. Subheading Note 2, in pertinent part, states:

2. (A) Products of chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of chapters 50 to 55 or of heading 5809 consisting of the same textile materials.
- (B) For the application of this rule:
 - (a) Where appropriate, only the part which determines the classification under general interpretative rule 3 shall be taken into account[.]

Note 2 to Section XI, HTSUSA, in turn, states:

Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material.

Where braids in the piece of heading 5808, HTSUSA, are composed only of interlaced textile material, the braid is akin to fabric of headings 50 to 55 and will be classified according to the textile material which predominates by weight pursuant to Note 2 to Section XI, HTSUSA. However, where braids in the piece of heading 5808, HTSUSA, are composed of an exterior braid of one material around a core of a different material, it is appropriate, pursuant to Subheading Note 2 to Section XI, HTSUSA, to take into account only the part which determines the classification of the braid under GRI 3. *See* HQ 957751, dated June 6, 1995. It would be in error to use chief weight

alone to decide classification of the braid. *Id.* Such braids constitute composite goods. GRI 3(b) directs that for a composite good consisting of different materials, which cannot be classified by reference to GRI 3(a), classification shall be according to the component that imparts the essential character of the good.

In the case at hand, KS2, KS3 and KS6 are composed only of interlaced textile material. Accordingly, these articles are classified according to the textile material which predominates by weight. If the man-made fibers in these samples predominate by weight, the samples will be classified in subheading 5808.10.7000, HTSUSA, which provides for: "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles: Braids in the piece: Other: Of cotton or man-made fibers." However, if the metallic strip in the samples predominates by weight, the samples will be classified in subheading 5808.10.9000, HTSUSA, which provides for: "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles: Braids in the piece: Other: Other."

KS5 is composed of an exterior braid of sixteen gimped metallic yarns around a core of four twisted single multifilament yarns. Pursuant to Subheading Note 2 to Section XI, HTSUSA, it is appropriate to take into account only the part which determines the classification of the braid under GRI 3. The braid cannot be classified pursuant to GRI 3(a). Under GRI 3(b), the exterior metallic yarns impart the essential character of the good. The article, therefore, is classified in subheading 5808.10.9000, HTSUSA.

HOLDING:

The articles identified as KS2, KS3 and KS6 in NY H87352 are classified in subheading 5808.10, HTSUSA, which provides for: "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles: Braids in the piece." We are not able to classify these articles at the 8-digit or 10-digit level because we do not have information relating to which material predominates by weight in each construction. As a result, we cannot set forth a rate of the duty for the articles.

The article identified as KS5 is classified in subheading 5808.10.9000, HTSUSA, which provides for: "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles: Braids in the piece: Other: Other." The applicable column one, general duty rate under the 2005 HTSUSA is 4.2 percent *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.

Note that if KS2, KS3, and/or KS6 are classified as of man-made fibers in subheading 5808.10.7000, HTSUSA, they will fall within textile category 229. 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.

EFFECT ON OTHER RULINGS:

NY H87352, dated February 19, 2002, is hereby modified as to the classification of KS2, KS3, KS5 and KS6. The classifications for the other articles in NY H87352 are correct and this ruling does not affect them.

MYLES B. HARMON,
Director,
Commercial & Trade Facilitation Division.

