

Bureau of Customs and Border Protection

General Notices

Docket No. USCBP-2006-0023

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

AGENCY: Customs and Border Protection, DHS

ACTION: Notice of meeting.

SUMMARY: The Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC) will meet in open session.

DATE: Tuesday, May 16, 2006, 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in the Horizon Ballroom of the Ronald Reagan Building, 1300 Pennsylvania Avenue, NW., Washington, DC. If you desire to submit comments, they must be submitted by May 15, 2006. Comments must be identified by **USCBP-2006-0023** and may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **E-mail:** traderelations@dhs.gov Include docket number in the subject line of the message.
- **Mail:** Ms. Wanda Tate, Office of Trade Relations, Customs and Border Protection, Department of Homeland Security, Washington, DC 20229.
- **Facsimile:** 202-344-1969.

Instructions: All submissions received must include the words "Department of Homeland Security" and the docket number for this action. Comments received will be posted without alteration at

www.regulations.gov, including any personal information provided. **Docket:** For access to the docket to read background documents or comments received by the COAC, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Wanda Tate, Office of Trade Relations, Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202-344-1440; facsimile 202-344-1969.

SUPPLEMENTARY INFORMATION: The sixth meeting of the ninth term of the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection and Related Functions (COAC) will be held at the date, time and location specified above. This notice also announces the expected agenda for that meeting below.

This meeting is open to the public; however, participation in COAC deliberations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to attend the meeting for special presentations. Since seating is limited, all persons attending this meeting should provide notice, preferably by close of business Thursday, May 11, 2006, to Ms. Wanda Tate, Office of Trade Relations, Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202-344-1440; facsimile 202-344-1969.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Wanda Tate as soon as possible.

Draft Agenda

1. Introductory Remarks
2. Container Security Issues
3. WCO (World Customs Organization) /Implementation
4. Update on HSPD-13/NMSAC (Homeland Security Presidential Directive-13 & National Maritime Security Advisory Committee)
5. Update on Security and Prosperity Partnership (SPP)
6. Security Subcommittee: C-TPAT (Customs-Trade Partnership Against Terrorism)
7. Green Lane Task Force
8. Textiles & Apparel Entry Processing
9. E-Manifest for Trucks
10. ACE (Automated Commercial Environment)/ITDS (International Trade Data System)
11. Radiation Portal Monitoring
12. Staffing: Import Specialists

13. Pre-Entry Information
14. New Action Items
15. Adjourn

STEWART A. BAKER,
Assistant Secretary,
Office of Policy,
United States Department of Homeland Security.

[Published in the Federal Register, May 1, 2006 (71 FR 25599)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, May 3, 2006

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

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

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF ELECTRODE STEAM HUMIDIFIERS

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of electrode steam humidifiers.

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 intends to revoke a ruling relating to the classification of electrode steam humidifiers under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment CBP has previously accorded to substantially identical transactions. These articles humidify air using steam created by introducing electricity to electrodes immersed in water. CBP invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before June 16, 2006.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Ave

nue N.W., 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 Mr. Joseph Clark at (202) 572-8768.

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 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 relating to the tariff classification of electrode steam humidifiers. Although in this notice CBP is specifically referring to one ruling, HQ 958017, 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 listed. No further rulings have been 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 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 it previously accorded 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 his agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 958017, dated February 13, 1996, electrode steam humidifiers were held to be classifiable as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85], in subheading 8543.80.75, HTSUS. This ruling was based on the belief that no other heading in Chapter 85 described the merchandise. HQ 958017 is set forth as "Attachment A" to this document.

It is now CBP's position that this merchandise is classifiable as electric instantaneous or storage water heaters, in subheading 8516.10.00, HTSUS. Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke HQ 958017 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in HQ 968027, which is set forth as "Attachment B" to this document.

Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: April 26, 2006

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 958017
February 13, 1996
CLA-2 RR:TC:MM 958017 LTO
CATEGORY: Classification
TARIFF NO.: 8543.80.75

PORT DIRECTOR
U.S. CUSTOMS SERVICE
127 North Water Street
Ogdensburg, New York 13669

RE: Protest 0712-94-100911; Humidifiers; non-domestic; electrical; headings 8415, 8419, 8479, 8516; EN 84.15; EN 84.19; EN 84.79; EN 85.43; HQ 956741; section XVI, note 2(a)

DEAR PORT DIRECTOR:

The following is our decision regarding Protest 0712-94-100911, which concerns the classification of humidifiers and parts thereof under the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise was entered on February 11 through February 18, 1994, and the entries were liquidated on May 20 and May 27, 1994. The protest was timely filed on August 17, 1994.

FACTS:

The humidifiers, with (NHMC) or without (MES) blower units, create steam which is used to humidify the air that passes through a furnace. The steam is produced by means of an electrical current generated between electrodes immersed in water. The humidifiers may be imported without a blower unit, in which case the furnace blower is utilized to propel the steam and air stream through ductwork and into the environment, or with a blower unit, which is in a separate housing that is mounted to the humidifier. The humidifiers were entered under subheading 8479.89.10, HTSUS, which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter: electromechanical appliances with self-contained electric motor: air humidifiers or dehumidifiers. They were classified upon liquidation under subheading 8419.19.00, HTSUS, which provides for nonelectric instantaneous or storage water heaters.

ISSUE:

Whether the humidifiers are classifiable under subheading 8479.89.10, HTSUS, which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter: electromechanical appliances with self-contained electric motor: air humidifiers or dehumidifiers.

LAW AND ANALYSIS:

The General Rules of Interpretation (GRI's) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes. . . ."

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System, and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The protestant contends that the humidifiers are classifiable under heading 8479, HTSUS, which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere in chapter 84, HTSUS. In support of this proposition, the protestant cites EN 84.15, pg. 1166, which states that heading 8415, HTSUS (air conditioning machines, comprising a motor-driven fan and elements for changing the temperature and humidity), excludes “[a]pparatus which, although incorporating a motor-driven fan, has the sole function of changing either the temperature or humidity of the air (headings 84.79, 85.16, etc.) (emphasis in original).” The protestant does not argue that the humidifiers are classifiable under heading 8415, HTSUS, but argues that EN 84.15 “directs” classification to heading 8479, HTSUS.

It has also been suggested that the humidifiers may be classifiable under heading 8543, HTSUS, which provides for electrical machines and apparatus, having individual functions, not specified or included elsewhere in chapter 85, HTSUS. However, if the humidifiers are “specified or included elsewhere” in chapter 84 or 85, HTSUS, or are “covered more specifically by a heading in any other Chapter of the Nomenclature,” they cannot be classified under heading 8479 or heading 8543, HTSUS. See EN 84.79, pg. 1314; EN 85.43, pg. 1402.

Heading 8419, HTSUS, provides for machinery, plant or laboratory equipment for the treatment of materials by a process involving a change of temperature such as steaming, evaporating or vaporizing. EN 84.19, pg. 1173, states that heading 8419, HTSUS, “covers machinery and plant designed to submit materials (solid, liquid or gaseous) to a heating or cooling process in order to cause a simple change of temperature, or to cause a transformation of the materials resulting principally from the temperature change. . . .” Humidifiers are designed to increase the humidity in the air by boiling water to produce steam. Arguably, these humidifiers submit a material (water) to a heating process causing a transformation of the material (water to steam) principally from the temperature change, and thereby, treating the air.

However, humidifiers are not described, nor are they similar to, the articles mentioned in EN 84.19, pg. 1172-1178. For example, the steaming machinery or plant of heading 8419, HTSUS, is “used in various manufacturing operations (e.g., in the preparation of vegetable or animal extracts; in the food industry generally; in operations involving the use of steam for degreasing or cleansing processes). Other types consist of larger chambers for subjecting material to more or less prolonged action of an atmosphere of steam; these are used, for example, for conditioning textile fibres in the mass, for steam-treatment of wood, etc.” See EN 84.19, pg. 1177. This machinery or plant submits a material, such as a vegetable or animal extract, to a steaming process which causes a change in the extracts from the temperature change. The machinery or plant of heading 8419, HTSUS, is used for the “treatment of materials,” for example, by steaming. Humidifiers, on the other hand, are used to create “steam.” They do not “treat” another ma-

terial with this steam. Accordingly, it is our opinion that humidifiers are not covered by the terms of heading 8419, HTSUS.

It has also been suggested that the humidifiers may be classifiable under heading 8516, HTSUS, which provides for other electrothermic appliances of a kind used for domestic purposes. The humidifiers, however, are not “used for domestic purposes,” and cannot be classified under heading 8516, HTSUS. See HQ 956741, dated November 2, 1994 (wherein “domestic” humidifiers with heaters were classified, according to note 3 to section XVI, HTSUS, under heading 8516, HTSUS).

It is our opinion that the humidifiers are not “specified or included elsewhere” in chapter 84 or 85, HTSUS, nor are they “covered more specifically by a heading in any other Chapter of the Nomenclature.” Accordingly, they are classifiable either under heading 8479 or heading 8543, HTSUS.

The humidifiers in question create steam by means of an electrical current generated between electrodes immersed in water. EN 85.43, pg. 1402, states that most of the appliances of heading 8543, HTSUS, operate “wholly electrically. However, the heading also includes electrical goods incorporating mechanical features [such as those found on the NHMC, which is imported with a blower unit] provided that such features are subsidiary to the electrical function of the machine or appliance (emphasis in original).” The humidifiers create steam using an electrical process rather than a mechanical one. Accordingly, they cannot be classified under subheading 8479.89.10, HTSUS, which provides for “[e]lectromechanical appliances with self-contained electric motor: [a]ir humidifiers or dehumidifier.” Rather, the humidifiers are classifiable under heading 8543, HTSUS, specifically under subheading 8543.80.75, HTSUS, which provides for other electrical machines and mechanical appliances, having individual functions.

Parts for humidifiers are classifiable in accordance with note 2 to section XVI, HTSUS. Note 2(a) provides, in pertinent part, that “parts of machines . . . are to be classified according to the following rules: (a) [p]arts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8485 and 8548) are in all cases to be classified in their respective headings.” Accordingly, if the parts in question are “goods included” in a section XVI, HTSUS, heading, they cannot be classified, as parts, under heading 8543, HTSUS. This would seem to apply, in particular, to transformers, fuses, switches, etc., found on various invoices. As there is no information concerning these and other parts beyond the one line description, it is impossible to render a definitive classification opinion regarding this merchandise.

HOLDING:

The humidifiers (NHMC and MES) are classifiable under subheading 8543.80.75, HTSUS. Classification for the humidifier parts cannot be determined based on the information provided.

The protest should be GRANTED with regard to the humidifiers, but DENIED with regard to the humidifier parts. In accordance with section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, this decision, together with the Customs Form 19, should be mailed by your office to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to the mailing of the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Cus-

toms Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act and other public access channels.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT B]

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

HQ 968027
CLA-2 RR:CTF:TCM 968027 JAS
CATEGORY: Classification
TARIFF NO.: 8516.10.0080

TOWER GROUP INTERNATIONAL, INC.
205 West Service Road
Champlain, NY 12919

RE: Electrode Steam Humidifiers; HQ 958017 Revoked

DEAR SIRs:

In HQ 958017, which the Director, Tariff Classification Appeals (now Commercial and Trade Facilitation) Division, Headquarters, issued to you on February 13, 1996, on behalf of Nortec Industries, Inc., Ogdensburg, NY, certain electrode steam humidifiers were found to be classifiable as other electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85], in subheading 8543.80.75, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered the classification in HQ 958017 and now believe that it is incorrect.

However, HQ 958017 represents a decision on a protest filed with the Port Director, U.S. Customs and Border Protection, Ogdensburg, NY, on behalf of Nortec Industries, Inc. Therefore, the proposed revocation of HQ 958017 will affect the legal principles in that decision but the liquidation or reliquidation of the underlying entries remains undisturbed. See San Francisco Newspaper Printing Co. v. United States, 620 F. Supp. 738, 9 CIT 517 (1985).

FACTS:

The humidifiers were described in HQ 958017 as creating steam which is used to add moisture, i.e., humidity, to the air that passes through a furnace. The steam is produced by means of hot water produced by an electric current generated between electrodes immersed in the water. The model NHMC humidifier is imported with a blower unit, which is in a separate housing that is mounted to the humidifier, while the model MES humidifier is imported without a blower unit, in which case the furnace blower is utilized to propel the steam and air stream through ductwork and into the environment. Both models are operated by microcomputer.

Submitted literature identifies humidifiers with design features and specifications that suggest industrial applications. The cycle of operation is

described “On demand from the humidistat, the primary contractor is energized; the fill solenoid opens and allows water to enter the cylinder through the fill cup; current flows between the electrodes in the water; once full load amps are reached the fill valve closes; as water boils away the low amp trigger reactivates the fill valve; pure steam is discharged, the water-borne minerals are left behind in the cylinder gradually increasing water conductivity; auto-drain takes over only when water is fully concentrated.”

The humidifiers were entered under subheading 8479.89.10, HTSUS, which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter, electromechanical appliances with self-contained electric motor, air humidifiers or dehumidifiers. They were classified in liquidation under subheading 8419.19.00, HTSUS, which provides for nonelectric instantaneous or storage water heaters. HQ 958017 held that neither of these provisions described the humidifiers and they were classified in subheading 8543.80.75, HTSUS.

The HTSUS provisions under consideration are as follows:

8516	Electric instantaneous or storage water heaters and immersion heaters; . . . ; other electrothermic appliances of a kind used for domestic purposes; . . . ; parts thereof:
8516.10.00	Electric instantaneous or storage water heaters and immersion heaters
*	* * * *
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [chapter 85]; parts thereof:
	Other machines and apparatus:
8543.89	Other:
	Other:
	Other:
8543.89.96 (formerly 80.75)	Other

ISSUE:

Whether electrode steam humidifier models NHMC and MES are goods of heading 8516.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), 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.

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

Initially, we are aware that air humidifiers and dehumidifiers which are electromechanical appliances with self-contained electric motor are provided for by name in subheading 8479.89.10, HTSUS. HQ 958017 noted that fact but concluded both heading 8479 and heading 8543, by their terms, must yield to a heading or headings which more specifically describe the humidifiers, either in Chapters 84 or 85, or elsewhere in the HTSUS.

HQ 958017 discounted heading 8516, electrothermic appliances of a kind used for domestic purposes, on the basis that the provision was limited to domestic-type appliances. This is incorrect. The provision in heading 8516 for electric instantaneous or storage water heaters and immersion heaters is not circumscribed by the requirement that they be for domestic purposes. We have again considered this provision and now believe that it describes the merchandise at issue.

The 85.16 ENs, under (A) ELECTRIC INSTANTANEOUS OR STORAGE WATER HEATERS AND IMMERSION HEATERS, describe (4) Electrode hot water boilers in which an [alternating current] AC passes through the water between two electrodes. Thus, electrode hot water boilers produce hot water. The term *boiler* frequently is used to describe appliances that produce both steam and hot water. The Institution of Electrical Engineers (IEE) publishes *The Electrician's Guide*, 16th Ed. which defines an *electrode heater* or *boiler* as a device which heats the water contained, or raises steam. www.tic-direct.co.uk/Book/7.11.2.htm. Further, the website for the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) contains a reference to the Herrmidifier Company that offers the Herrtronic MD series self-contained electrode boilers, designed for steam humidification systems in computer rooms, telecommunication switchgear facilities and laboratory cleanrooms. www.ashrae.org. This information warrants the conclusion that the function of electrode boilers is to produce hot water with steam being a byproduct for the purpose of introducing moisture into the air (humidity). Such apparatus is provided for in heading 8516. This finding eliminates heading 8543 from consideration.

HOLDING:

Under the authority of GRI 1, the electrode steam humidifiers, models NHMC and MES, are provided for in heading 8516. They are classifiable in subheading 8516.10.0080, HTSUSA.

EFFECT ON OTHER RULINGS:

HQ 958017, dated February 13, 1996, is revoked.

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

**REVOCATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A CERTAIN SHORT-SLEEVED
BATTING JACKET**

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

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of a certain short-sleeved batting jacket.

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") is revoking one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of a certain short-sleeved batting jacket. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice proposing these actions and inviting comments on their correctness was published in the *Customs Bulletin*, Volume 40, Number 13, on March 22, 2006. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 16, 2006.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Tariff Classification and Marking Branch, Commercial and Trade Facilitation Division, Office of Regulations and Rulings 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, notice proposing to revoke New York Ruling Letter (“NY”) L80081 was published in the *Customs Bulletin*, Volume 40, Number 13, on March 22, 2006. No comments were received in response to this notice. As stated in the proposed notice, the 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 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 have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during the comment period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY L80081, CBP classified a “men’s woven shirt from Taiwan or China” identified as “Style 985” in subheading 6205.30.2070, HTSUS, which provides for: “Men’s or boys’ shirts: Of man-made fibers: Other: Other, Other: Other: Men’s.” Based on our recent review of NY L80081, the physical attributes and principal purpose of Style 985, and the scope of heading 6201, HTSUS, heading 6205, HTSUS, and heading 6211, HTSUS, we have determined that the classification set forth for Style 985 in NY L80081 is incorrect. Based on our review, we now believe that Style 985 is a “men’s short-sleeved bathing jacket” that is properly classified in subheading 6211.33.0061, HTSUS, which provides for: “Track suits, ski-suits and swimwear; other garments: Other garments, men’s or boys: Of man-made fibers, Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY L80081 and 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 analysis set forth in Headquarters Ruling Letter (“HQ”) 967839, which is set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: April 26, 2006

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

Attachment

HQ 967839
April 26, 2006
CLA-2 RR:CR:TE 967839 BtB
CATEGORY: Classification
TARIFF NO.: 6211.33.0061

MS. JENNIFER SCOTT
EXPEDITORS INTERNATIONAL OF WASHINGTON, INC.
21318 64th Avenue South
Kent, WA 98032

Re: Classification of a men’s short-sleeved batting jacket; Revocation of NY L80081

DEAR MS. SCOTT:

On October 28, 2004, U.S. Customs and Border Protection (“CBP”) issued New York Ruling Letter (“NY”) L80081 to you on behalf of High Five Sportswear (“High Five”). In NY L80081, CBP classified a “men’s woven shirt from Taiwan or China” identified as “Style 985” in subheading 6205.30.2070, Harmonized Tariff Schedule of the United States Annotated, which provides for: “Men’s or boys’ shirts: Of man-made fibers: Other: Other: Other: Other: Men’s.”

We have reviewed NY L80081 and have determined that the classification set forth for Style 985 in that ruling is incorrect. This ruling sets forth the correct classification of the style and revokes NY L80081.

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 L80081 was published in the *Customs Bulletin*, Volume 40, Number 13, on March 22, 2006. CBP received no comments during the notice and comment period that closed on April 21, 2006.

FACTS:

Style 985 is identified by High Five in product catalogs and on its website as a “short sleeve batting jacket.” In NY L80081, the style was described as follows:

Style 985 is a men’s pullover shirt constructed from 100 percent nylon, woven taffeta fabric. The garment features a round neck; a partial front opening with two snap closures; short, hemmed sleeves; rib knit inserts at the armholes; and a straight bottom with a drawcord and cord lock. The upper portion of the back panel is of mesh knit fabric covered with a free hanging nylon taffeta yoke.

ISSUE:

Whether Style 985 is classifiable as a men’s shirt in heading 6205, HTSUSA, as a men’s jacket under heading 6201, HTSUSA, or in heading 6211, HTSUSA, as an “other” garment.

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 6201, HTSUSA, provides for: “Men’s or boys’ overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6203.” Heading 6205, HTSUSA, provides for: “Men’s or boys’ shirts.” The EN to heading 6205 state, in pertinent part, that heading 6205 “**does not cover** garments having the character of wind-cheaters, wind-jackets, etc. of heading **62.01**, which generally have a tightening at the bottom. . . .”

CBP recognizes that garments may possess features of both shirts and jackets. CBP considers such garments to be “hybrid garments.” See *generally* Headquarters Ruling (“HQ”) 967188, dated January 28, 2005. We find the style at issue, Style 985, to be one of these garments. When the identity of a garment is ambiguous for classification purposes, reference to The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories, CIE 13/88 (“Guidelines”) is appropriate.

The Guidelines were developed and revised in accordance with the HTSUSA to ensure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles. The Guidelines offer the following with regard to the classification of men’s or boy’s shirt-jackets:

Three-quarter length or longer garments commonly known as coats, and other garments such as . . . waist length jackets fall within this category. . . . A coat is an outerwear garment which covers either the upper part of the body or both the upper and lower parts of the body. It is normally worn over another garment, the presence of which is sufficient for the wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both. Garments in this category have a full or partial front opening, with or without a means of closure. Coats have sleeves of any length.

* * * * *

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

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

* * * * *

“Garments having features of both jackets and shirts will be categorized as coats if they possess at least three of the above listed features and if the result is not unreasonable. . . . Garments not possessing at least three of the listed features will be considered on an individual basis.” See Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories, CIE 13/88 at 5–6 (Nov. 23, 1988) and the CBP Informed Compliance Publication (ICP) What Every Member of the Community Should Know About: Apparel Terminology Under the HTSUS, (Jan., 2004).

The Guidelines offer the following with regard to the classification of men’s or boy’s shirts, not knit:

These categories cover male outer garments which extend from the neck and shoulder areas to or below the waist. A shirt should have a full or partial front opening, which closes left side over right side. These garments are worn over underwear or the skin and are considered conventional attire indoors and outdoors without other garments over them; they suffice the wearer except where circumstances dictate that a further degree of formality is required or where weather conditions necessitate additional protection. Shirts must have sleeves. *Id.* at 15.

Unlike the Guideline's description of men's or boy's non-knit shirts, the style will not be worn over merely underwear or the skin and is not considered conventional attire. The style's oversized fit supports it will be worn over other garments, like a jacket. As a result, we find that Style 985 is not classified in heading 6205, HTSUSA, as a men's shirt.

Style 985 has three of the listed features of a shirt-jacket, a partial lining of mesh knit fabric, jacket-style snaps, and a drawstring at its waist. Under the Guidelines, therefore, the style should be categorized as a coat "if the result is not unreasonable." In this instance, however, we find classification of the style at issue as a coat to be unreasonable. We acknowledge that Style 985 does have certain characteristics associated with garments of heading 6201, specifically wind-cheaters or wind-jackets. First, the style has a nylon shell which is typical for windbreakers. Second, Style 985 has a drawstring tightening at its bottom. However, we emphasize that unlike garments of heading 6201, Style 985 will not be primarily worn for protection against inclement weather, as garments of heading 6201 are typically worn. *See generally* HQ 957230, dated November 29, 1994. Many of its features (e.g., short sleeves, rounded neckline with no collar) evidence that the article is not designed for protection against the elements. As a result, we find that Style 985 is not classified in heading 6201, HTSUSA, as a men's jacket.

Keeping the article's distinct features in mind, CBP has extensively researched the garment at issue and its principal use. We find High Five's reference to the style as a "batting jacket" to be accurate. More specifically, the garment is a "short sleeved batting jacket" that is worn by baseball or softball players over their uniforms during batting practice or warmup. Substantially similar batting jackets are manufactured or sold by major baseball apparel companies and are used by players from kid's to professional leagues.

Style 985 is specifically to be worn while engaged in baseball or softball and the garments' design features are specially suited to those sports. The garment is primarily worn to help a player retain body heat, thereby facilitating warmup. It also helps a player keep his or her uniform clean before game time. The style's short sleeves and knit rib shoulder insets allow arm mobility while throwing or batting. While the style may have a nylon shell similar to a windbreaker, unlike a windbreaker, the garment is not principally worn for protection against inclement weather as a jacket or jacket-type garment of heading 6201, HTSUSA.

Heading 6211, HTSUSA, provides for: "Track suits, ski-suits and swimwear; other garments. The EN to heading 6211 states, in pertinent part, that the EN to heading 6114 concerning other garments apply, *mutatis mutandis*, to the articles of heading 6211. Heading 6114 provides for: "Other garments, knitted or crocheted." The EN to this heading state, in relevant part:

This heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of [Chapter 61].

The heading includes, *inter alia*:

* * * * *

- (5) Special articles of apparel used for certain sports or for dancing or gymnastics (e.g., fencing clothing, jockeys' silks, ballet skirts, leotards).

CBP considers that the term “certain” limits the scope of the heading to those articles of sporting apparel which, protective or otherwise, are as a general matter, worn only while engaging in the activity for which they were designed. *See* HQ 957469, dated November 7, 1995, on the classification of knit baseball and football compression shorts. Thus, while football pants or baseball pants might be classifiable in heading 6211, such articles as tennis or rugby shorts, which are often worn off the court or playing field, would most likely not be so classifiable. *Id.* In determining if a particular garment is classifiable as a special article of sports apparel classifiable in heading 6114 or, as in this case, heading 6211, CBP has looked to whether the garment is designed to be worn while engaged in a specific sport as illustrated by its ability to serve a particular function for that sport, such as, give additional protection to the wearer, and its recognized uniqueness to that sport. *Id.* Finally, and crucially, CBP also looks to whether the garment would be worn only while participating in the sport for which it is designed and would not ordinarily be worn at any other time.

Due to its unique construction and lack of qualities that would make Style 985 practical or desirable to wear at times other than playing baseball or softball (protection against the elements, the presence of team logos, etc.), we find that the style would not ordinarily be worn at any other time than while playing these sports. *See* HQ 967840, dated November 2, 2005, in which we made identical determinations on a short-sleeved batting jacket with a hemmed bottom. As a result, we find that Style 985 is classified in heading 6211, HTSUSA, as a special article of apparel used for baseball or softball, an “other” garment.

Note that due to its distinct styling and use, Style 985 is not a jacket or jacket-type garment of heading 6201, HTSUSA, or a shirt of heading 6205, HTSUSA, although the garment may possess features of articles of both headings. Consequently, Style 985 is not classified in subheading 6211.33.0058, HTSUSA, a subheading under heading 6211 providing for “Jackets and jacket-type garments excluded from heading 6201” or subheading 6211.33.0040, HTSUSA, a subheading under heading 6211 providing for “Shirts excluded from heading 6205.”

HOLDING:

The men’s batting jacket identified as Style 985 is classified in subheading 6211.33.0061, HTSUSA, which provides for: “Track suits, ski-suits and swimwear; other garments: Other garments, men’s or boys: Of man-made fibers, Other.” The applicable column one, general rate of duty for the merchandise under the 2006 HTSUSA is 16% *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.

Style 985 falls within textile category 659. 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 L80081, dated October 28, 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 Trade and Facilitation Division.



**PROPOSED MODIFICATIONS OF RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF CERTAIN SKIN CARE PRODUCTS**

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

ACTION: Notice of proposed modification of three ruling letters and revocation of treatment relating to the tariff classification of certain skincare products.

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) intends to modify three ruling letters relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain skincare products. Similarly, CBP is revoking 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 June 16, 2006.

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

FOR FURTHER INFORMATION CONTACT: 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, this notice advises interested parties that CBP intends to modify three rulings relating to the tariff classification of certain skincare products. Although in this notice CBP is specifically referring to the modification of New York Ruling Letter (NY) G88456 and NY G88457, both dated April 9, 2001, and NY 801325, dated September 16, 1994 (set forth as Attachments A through C to this document), 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 three 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 G88456 and G88457, both dated April 9, 2001, CBP classified the “Iriane and Les Florales” Eye Contour Gel and “*Les Spéifiques*” Eye Make-up Remover Lotion (HTSUS), respectively, in subheading 3304.20.0000, Harmonized Tariff Schedule of the United States, which provides for “Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Eye make-up preparations.” In NY 801325, dated September 16, 1994, CBP classified the Nutriol Eyelash Conditioner in subheading 3304.20.0000, HTSUS.

Upon review of these rulings, CBP has determined that the identified merchandise was classified incorrectly. The merchandise should be classified in subheading 3304.99.5000, which provides for “Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Other: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY G88456, NY G88457 and NY 801325, and any other ruling not specifically identified, in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letters (HQ) 967517 and HQ 967518, set forth as Attachments D and E 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: April 26, 2006

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 G88456

April 9, 2001

CLA-2-33:RR:NC:2:240 G88456

CATEGORY: Classification

TARIFF NO.:3304.20.0000; 3304.99.5000; 3401.11.5000

MS. NATHALIE NUTTING
17, Avenue de l'Epee #5
Outremont, Quebec, H2V 3S8 Canada

RE: The tariff classification of "Irione and Les Florales" Make-up, Skin Care and Cleansing Products from France

DEAR MS. NUTTING:

In your letter dated March 18, 2000, you requested a tariff classification ruling. Samples were submitted with your inquiry and are being returned as requested. The "Irione and Les Florales" product line consists of five products: Facial Rejuvenating Cream Irione, Facial Rejuvenating Oil Irione, Eye Contour Gel, Nourishing Cream and Cleansing Bar. All products are packed for retail sale.

The applicable subheading for the Eye Contour Gel will be 3304.20.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Eye make-up preparations. . . . The rate of duty will be free.

The applicable subheading for the Skin Care Products will be 3304.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Other. . . . The rate of duty will be free.

The applicable subheading for the Cleansing Bar will be 3401.11.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Soap and organic surface-active products and preparations, in the form of bars, cakes, molded pieces or shapes, and paper, wadding, felt and nonwovens, impregnated, coated or covered with soap or detergent: For toilet use (including medicated products): Other. . . . The rate of duty will be free.

Perfumery, cosmetic and toiletry products are 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 (301) 443-6553.

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 Stephanie Joseph at 212-637-7066.

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

[ATTACHMENT B]

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

NY G88457
April 9, 2001
CLA-2-33:RR:NC:2:240 G88457
CATEGORY: Classification
TARIFF NO.:3304.20.0000; 3304.99.5000

MS. NATHALIE NUTTING
17, Avenue de l'Epee #5
Outremont, Quebec, H2V 3S8 Canada

RE: The tariff classification of "Les Spécifiques" Make-up and Skin Care Products from France

DEAR MS. NUTTING:

In your letter dated March 18, 2000, you requested a tariff classification ruling. Samples were submitted with your inquiry and are being returned as requested. The "Les Spécifiques" product line consists of five products: Eye Make-up Remover Lotion, Regenerative Face Mask, Purifying Mask, Cleansing Milk and Tonic Lotion. All products are packed for retail sale.

The applicable subheading for the Eye-make up Remover will be 3304.20.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Eye make-up preparations. . . . The rate of duty will be free.

The applicable subheading for the skin care products will be 3304.99.5000, Harmonized Tariff Schedule of the United States (HTS), which provides for Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Other. . . . The rate of duty will be free.

Perfumery, cosmetic and toiletry products are 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 (301) 443-6553.

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 Stephanie Joseph at 212-637-7066.

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

[ATTACHMENT C]

NY 801325
September 16, 1994
CLA-2-33:N:N7:240 801325
CATEGORY: Classification
TARIFF NO.: 3304.20.0000; 3304.99.000

MR. MARK P. NEUMANN
NU SKIN INTERNATIONAL, INC.
One Nu Skin Plaza
75 West Center
Provo, Utah 84601

RE: The tariff classification of NuSkin Glacial Marine Mud from Canada and Nutriol Eyelash Conditioner and Nutriol Mascara from Italy

DEAR MR. NEUMANN:

In your letter dated August 17, 1994, you requested a tariff classification ruling.

NuSkin Glacial Marine Mud, packaged for retail sale, is a natural face and body mud for cleansing the skin. Nutriol Eyelash Conditioner, packaged for retail sale, contains mucopolysaccharides and used to help keep eyelashes thick, healthy and protected. Nutriol Mascara, also packaged for retail sale, contains mucopolysaccharides formulated to separate and evenly coat lashes while conditioning them. The applicable tariff provision for NuSkin Glacial Marine Mud will be 3304.99.0000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for other preparations for the care of the skin. The general rate will be 4.9 percent ad valorem.

The applicable HTS subheading for Nutriol Eyelash Conditioner and Nutriol Mascara will be 3304.20.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for eye make-up preparations. The duty rate will be 4.9 percent ad valorem.

The above products may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already

been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director.

[ATTACHMENT D]

HQ 967517
CLA-2 RR:CTF:TCM 967517 TMF
CATEGORY: Classification
TARIFF NO.: 3304.99.5000

MR. MARK P. NEUMANN
NU SKIN INTERNATIONAL, INC.
*One Nu Skin Plaza
75 West Center
Provo, Utah 84601*

RE: Modification of New York Ruling Letter (NY) 801325, dated September 16, 1994; Classification of Nutriol Eyelash Conditioner

DEAR MR. NEUMANN:

In New York Ruling Letter (NY) 801325, issued to you on September 16, 1994, Customs and Border Protection (CBP) classified, among other things, Nutriol Eyelash Conditioner in subheading 3304.20.0000, Harmonized Tariff Schedule of the United States, which provides for "Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Eye make-up preparations." We have reviewed NY 801325, and found it to be in error with regard to the Nutriol Eyelash Conditioner. Therefore, this ruling modifies NY 801325.

FACTS:

New York Ruling Letter (NY) 801325 describes the Nutriol Eyelash Conditioner as "packaged for retail sale, contains mucopolysaccharides and used to help keep eyelashes thick, healthy and protected."

ISSUE:

What is the classification of the Nutriol Eyelash Conditioner?

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).

Heading 3304 covers beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations. Cosmetics or makeup is defined in the Encyclopedia Britannica as “substances to enhance the beauty of the human body, apart from simple cleaning.” Subheading 3304.20.000 provides for eye makeup preparations. Goods classified in this subheading are limited to products that are used to beautify the eye area. In this case, the subject merchandise is used for improving the condition of eyelashes.

Thus, it is the opinion of this office that products such as the instant eyelash conditioner are more appropriately classified with other skincare products that are used for moisturizing the skin within subheading 3304.99.5000, HTSUS, which provides for “Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Other: Other.”

HOLDING:

NY 801325, dated September 16, 1994, is hereby modified. The Nutriol Eyelash Conditioner is classifiable in subheading 3304.99.5000, which provides for “Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Other: Other.” The general column one duty rate is FREE.

MYLES B. HARMON,

Director,

Commercial Trade and Facilitation Division.

[ATTACHMENT E]

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

HQ 967518

CLA-2 RR:CTF:TCM 967518 TMF

CATEGORY: Classification

TARIFF NO.: 3304.99.5000

MS. NATHALIE NUTTING
*17 Avenue de l'Epee, #5
Outremont, Quebec H2V 3S8
Canada*

Re: Modification of New York Ruling Letters (NY) G88456 and G88457,
both dated April 9, 2001

DEAR MS. NUTTING:

In New York Ruling Letters (NY) G88456 and G88457, both issued to you on April 9, 2001, Customs and Border Protection (CBP) classified, among other things, the “Irione and Les Florales” Eye Contour Gel and “Les

Spécifiques” Eye Make-up Remover Lotion in subheading 3304.20.0000, Harmonized Tariff Schedule of the United States, which provides for “Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations; Eye make-up preparations.” We have reviewed NY G88456 and G88457 and found them to be in error with regard to the classification of these products. Therefore, this ruling modifies both NY G88456 and G88457.

FACTS:

New York Ruling Letter (NY) G88456 describes the “Irione and Les Florales” product line as consisting of five products: Facial Rejuvenating Cream Irione, Facial Rejuvenating Oil Irione, Eye Contour Gel, Nourishing Cream and Cleansing Bar. All products are packed for retail sale. The subject of this reconsideration is the Eye Contour Gel.

New York Ruling Letter (NY) G88457 describes the “Les Spécifiques” product line as consisting of five products: Eye Make-up Remover Lotion, Regenerative Face Mask, Purifying Mask, Cleansing Milk and Tonic Lotion. All products are packed for retail sale. The subject of this reconsideration is the Eye Make-up Remover Lotion.

ISSUE:

What is the classification of the “Irione and Les Florales” Eye Contour Gel and “*Les Spécifiques*” Eye Make-up Remover Lotion?

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).

Heading 3304 covers beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations. Cosmetics or makeup are defined in the Encyclopedia Britannica as “substances to enhance the beauty of the human body, apart from simple cleaning.” Subheading 3304.20.000 provides for eye makeup preparations. Goods classified in this subheading are limited to products that are used to beautify the eye area. In this case, the subject eye contour gel is used for improving the condition of the eye area. With regard to the subject eye makeup remover, we find that it is not for beautification, but for removal of makeup.

Thus, it is the opinion of this office that products such as the goods at issue are more appropriately classified with other skincare products that are used for cleansing and moisturizing the skin within subheading 3304.99.5000, which provides, in pertinent part, for skin preparations.

HOLDING:

NY G88456 and NY G88457, both dated April 9, 2001, are hereby modified. "Iriane and Les Florales" Eye Contour Gel and "*Les Spécifiques*" Eye Makeup Remover Lotion are classifiable in subheading 3304.99.5000, which provides for "Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: Other: Other: Other." The general column one duty rate is FREE.

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