

Bureau of Customs and Border Protection

General Notices

ANNOUNCEMENT

Chief Judge Jane A. Restani has announced the call of the 14th Judicial Conference of the United States Court of International Trade. The Conference is scheduled for Monday, November 6, 2006 at the New York Marriott Marquis Times Square, 1535 Broadway, New York, New York and will commence promptly at 8:30 a.m.

The theme of the Conference is: **“Something Old, Something New: Emerging Issues Before The Court.”**

The Conference will be attended by the Judges of the United States Court of International Trade; officials from the International Trade Commission, the Bureau of Customs and Border Protection, the Departments of Justice, Commerce and Treasury; members of the Bar of the Court; and other distinguished guests.

All interested persons are invited to attend. The Conference program, registration forms and additional information may be obtained through the Judicial Conference page on the Court’s Website, www.cit.uscourts.gov or by contacting the Clerk’s Office at 212-264-2800.

Tina Potuto Kimble
Clerk of the Court

September 27, 2006

Financial Hardship Policy

The U.S. Court of International Trade offers a discount of 15% off the conference/course fee to law students attending an accredited law school, solo attorneys admitted to the bar less than two years, government attorneys whose agencies/departments are not funding their attendance, attorneys who work for non-profit or legal services organizations, and unemployed attorneys. To qualify for the discount, submit a letter on your firm/agency/personal letterhead outlining how you qualify for the discount, along with a check in the amount of \$161.50 and a completed registration form to the address listed above. Students must submit a copy of their current and valid Student ID card.

**PROPOSED COLLECTION; COMMENT REQUEST
Customs Declaration (Form 6059-B)**

ACTION: Notice and request for comments.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Customs Declaration. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (71 FR 12387) on March 10, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before November 2, 2006, to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget Desk Officer at Nathan.Lesser@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and

- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Customs Declaration

OMB Number: 1651-0009

Form Number: CBP Form 6059-B

Abstract: The Customs Declaration, CBP Form 6059-B, requires basic information to facilitate the clearance of persons and goods arriving in the United States and helps CBP officers determine if any duties of taxes are due. The form is also used for the enforcement of CBP and other agencies laws and regulations.

Current Actions: Extension without change.

Affected Public: Traveling public

Estimated Number of Respondents: 60,000,000

Estimated Time Per Respondent: 4 minutes and 5 seconds

Estimated Total Annual Burden Hours: 4,038,000

Estimated Total Annualized Cost on the Public: N/A

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: September 26, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, October 3, 2006 (71 FR 58423)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
Declaration for Free Entry of Unaccompanied Articles**

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Declaration for Free Entry of Unaccompanied Articles. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden

hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (71 FR 12389) on March 10, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before November 2, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget Desk Officer at Nathan.Lesser@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Declaration for Free Entry of Unaccompanied Articles

OMB Number: 1651-0014

Form Number: CBP Form-3299

Abstract: The Declaration for Free Entry of Unaccompanied Articles, Form 3299, is prepared by the individual or the broker acting as agent for the individual, or in some cases, the CBP officer. It

serves as a declaration for duty-free entry of merchandise under one of the applicable provisions of the tariff schedule.

Current Actions: This submission is being submitted to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change)

Affected Public: Businesses, Individuals, Institutions

Estimated Number of Respondents: 150,000

Estimated Time Per Respondent: 10 minutes

Estimated Total Annual Burden Hours: 25,000

Estimated Total Annualized Cost on the Public: N/A

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: September 26, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, October 3, 2006 (71 FR 58423)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:
Application-Permit-Special License Unlading/Lading
Overtime Services**

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application/Permit/Special License, Unlading/Lading Overtime Services. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (71 FR 12381) on March 10, 2006, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before November 2, 2006.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget Desk Officer at Nathan.Lesser@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Application/Permit/Special License, Unlading/Lading Overtime Services

OMB Number: 1651-0005

Form Number: Form CBP-3171

Abstract: Form CBP-3171, is used by commercial carriers and importers as a request for permission to unlade imported merchandise, baggage, or passengers and for overtime services of CBP officers in connection with lading or unlading of merchandise, or the entry or clearance of a vessel, including the boarding of a vessel for preliminary supplies, ship's stores, sea stores, or equipment not to be reladen, which is subject to free or duty-paid entry.

Current Actions: This submission is to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change)
Affected Public: Businesses, or other for-profit.
Estimated Number of Respondents: 399,000
Estimated Time Per Respondent: 8 minutes
Estimated Total Annual Burden Hours: 51,870
Estimated Total Annualized Cost on the Public: N/A

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: September 26, 2006

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, October 3, 2006 (71 FR 58422)]

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

Washington, DC, October 4, 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.*

**REVOCATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
CERTAIN MANICURE AND PEDICURE SETS CONTAINING
TEXTILE GLOVES AND SOCKS**

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

ACTION: Notice of revocation of a ruling letter pertaining to the tariff classification of certain manicure and pedicure sets containing textile gloves and socks.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain manicure and pedicure sets containing textile gloves and socks. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published on August 23, 2006 in the CUSTOMS BULLETIN in Volume 40, Number 35. 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 December 17, 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 revoke New York Ruling Letter (NY) L81820, dated January 11, 2005 and to revoke any treatment accorded to substantially identical merchandise was published on August 23, 2006 in the CUSTOMS BULLETIN, in Volume 40, Number 35. No comments were received in response to this notice.

As stated in the notice of proposed revocation, 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.*, 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 merchandise. Any person involved with substantially identical merchandise should have advised CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the

part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking New York Ruling Letter (NY) L81820, dated January 11, 2005, and any other rulings not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 967739, 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 action will become effective 60 days after publication in the CUSTOMS BULLETIN.

DATED: September 29, 2006

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 967739
September 29, 2006
CLA-2 RR:CTF:TCM 967739 TMF
CATEGORY: Classification
TARIFF NO.: 3924.90.55; 4417.00.80; 6805.20.00; 8214.20.30;
6116.92.6440; 6115.92.9000; 8214.90.90; 9603.29

JEFFREY MEEKS, ESQ.
MEEKS & SHEPPARD
1735 Post Road
Suite 4
Fairfield, Connecticut 06824

RE: Revocation of NY L81820, dated January 11, 2005; classification of Totally Together™ brand "Give Me a Helping Hand" manicure kit and Totally Together™ brand "On Your Feet" pedicure kit

DEAR MR. MEEKS:

This letter is in response to your request, on behalf of your client, W.E. Bassett Company, for reconsideration of New York Ruling Letter (NY) L81820, dated January 11, 2005.

On May 1, 2006, you requested on behalf of your client that we withdraw your client's request. However, in light of our review and determination that the classification was in error, we are revoking NY L81820.

Specifically, in NY L81820, two items were classified in subheading 8214.20.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for, in relevant part "[m]anicure and pedicure sets, and combinations thereof, in leather cases or other containers of types ordinarily sold therewith in retail sales: other", with requirements for quota/visa found

applicable to the textile gloves and socks that were included in the sets. We have reviewed NY L81820 and find it to be in error. Therefore, this ruling revokes NY L81820.

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 was published on August 23, 2006 in the CUSTOMS BULLETIN in Volume 40, Number 35. No comments were received in response to this notice.

FACTS:

NY L81820 describes the merchandise as follows:

Totally Together™ brand “Give Me a Helping Hand” is a manicure set comprised of 1 nail brush, 1 cuticle pusher, 1 cuticle remover, 4 2-sided mini emery boards, 1 sapphire file, 1 4-step buffing block, and a pair of moisture gloves (constructed of 92% cotton, 8% spandex knit fabric). The manicure set is packed in a plastic pouch.

Totally Together™ brand “On Your Feet” is a pedicure set comprised of 1 nail brush, 3 cuticle sticks, 1 toenail clipper, 1 callus remover [which does not file nails], 2 toenail separators, and a pair of moisture socks (92% cotton, 8% spandex knit fabric). The pedicure set is packed in a plastic pouch.

ISSUE:

Whether the subject Totally Together™ brand “Give Me a Helping Hand” and Totally Together™ brand “On Your Feet” products are GRI 1 sets?

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 8214, provides, *eo nomine* for manicure and pedicure sets. EN 82.14 states that the heading includes, in pertinent part, scissors, non-metallic nail polishers, hair removing tweezers, etc., which if taken separately, would be classified in their respective headings.

We refer to the Informed Compliance Publication, *Classification of Sets Under HTSUS*, which states:

In certain areas of the HTSUS, sets are specifically mentioned by name. The only requirements which are to be followed when dealing with a GRI 1 set are those mentioned in the particular HTSUS provisions describing the set, relevant chapter and section notes, and the rel-

evant Explanatory Notes (ENs). . . . The rules with regard to GRI 3(b) sets, . . . do not apply to GRI 1 sets [footnote omitted.]

In this case, NY L81820 classified the goods as GRI 1 sets within heading 8214, HTSUSA. However, we have reviewed L81820 and determined that the decision was issued in error as neither of the two subject products are GRI 1 sets since they contain textile gloves and socks. The term “set” commonly is known to mean an item that contains goods which are put together for a particular purpose. Heading 8214, provides, *eo nomine* for manicure and pedicure sets. EN 82.14 states that the heading includes, in pertinent part, scissors, non-metallic nail polishers, hair removing tweezers, which if taken separately, would be classified in their respective heading. Although EN 82.14 refers to various implements used for cutting, sharpening, filing, extracting, it does not refer to textile goods such as the instant ones which were designed to cover the hands and feet and serve as barriers to seal in moisture.

Based upon our review of various manicure and pedicure sets, we believe that the subject articles are not GRI 1 manicure and pedicure sets as commonly or commercially known and sold in retail as they contain textile articles which are not *ejusdem generis* within the exemplars outlined in EN 82.14. As neither of the textile articles contained in the Totally Together™ brand samples were contemplated by this EN and textile articles serve a different purpose from the implements with which they are packaged, it is our view that the subject Totally Together™ brands are not GRI 1 sets.

With respect to the subject two samples, it is our view that they are not GRI 3(b) sets. GRI 3(b) provides:

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

In this instance, the various articles in the two samples are not put together for a particular need or activity. Although they are marketed as manicure/pedicure kits, we find that the textile gloves and socks are not customarily used in a manicure or pedicure. Thus, their inclusion precludes the instant samples from being GRI 3(b) sets. Rather, each article within both samples should be separately classified pursuant to GRI 1, HTSUS.

HOLDING:

Both Totally Together™ products, identified as “Give Me a Helping Hand” manicure products and “On Your Feet” pedicure products are classified separately pursuant to GRI 1 as follows:

Helping Hand:

-Nail Brush – is classifiable in subheading 9603.29, HTSUS, which provides, in pertinent part, for nail brushes. The general column one duty rate is as follows: If the merchandise is valued less than 40 cents each, the assessed duty rate is 0.2 cents each plus 7 percent *ad valorem*. If the merchandise is valued greater than 40 cents each, the assessed duty rate is 0.3 cents each plus 3.6 percent *ad valorem*.

-Cuticle Pusher/Cuticle Remover and Sapphire File – are classifiable in subheading 8214.20.30, HTSUS, which provides for, among other

things, cuticle pushers and nail files. The general column one duty rate is 4 percent *ad valorem*.

-Mini Emery Boards – Since the base of the good is coated with abrasive powder or grain, classification is in subheading 6805.20.00, HTSUS, which provides for “Natural or artificial abrasive powder or grain, on a base of . . . paperboard . . . , whether or not cut to shape or sewn or otherwise made up.” The general column one duty rate is FREE.

-Buffing Block – The block has four surfaces for buffing nails: two surfaces composed of an abrasive powder or grain (which is provided for in heading 6805), and two with smooth surfaces coated with plastic (which is provided for by heading 3924). As no surface imparts the essential character of the buffing block, pursuant to GRI 3(c), classification will be the heading that appears last in numerical order among those which equally merit consideration, which is heading 6805, HTSUS, which provides for “Natural or artificial abrasive powder or grain, on a base of textile material, of paper, of paperboard or of other materials, whether or not cut to shape or sewn or otherwise made up.” The general column one duty rate is FREE.

-Moisture Gloves – are classifiable in subheading 6116.92.6440, HTSUS, which provides for other knitted or crocheted, cotton gloves made from a pre-existing machine knit fabric without fourchettes. The general column one duty rate is 23.5 percent *ad valorem*, quota category number is 331.

On Your Feet

-Nail Brush – is classifiable in subheading 9603.29, HTSUS, which provides, in pertinent part, for nail brushes. The general column one duty rate is as follows: If the merchandise is valued less than 40 cents each, the assessed duty rate is 0.2 cents each plus 7 percent *ad valorem*. If the merchandise is valued greater than 40 cents each, the assessed duty rate is 0.3 cents each plus 3.6 percent *ad valorem*.

-Cuticle Sticks – are classifiable in subheading 4417.00.80, which provides, in pertinent part for other tools of wood. The general column one duty rate is 5.1 percent *ad valorem*.

-Toenail Clipper – is classifiable in subheading 8214.20.30, HTSUS, which provides, in pertinent part, for nail clippers. The general column one duty is 4 percent *ad valorem*.

-Callus Remover – which does not file nails, is classifiable in subheading 8214.90.90, HTSUS, which provides for “other articles of cutlery . . . ; manicure or pedicure sets and instruments . . . ; base metal parts thereof: other: other.” The general column one duty rate is 1.4 cents each plus 3.2 percent *ad valorem*.

-Toenail Separators – are classifiable in subheading 3924.90.55, HTSUS, which provides for “tableware, kitchenware, other household articles and toilet articles, of plastics: Other: Other.” The general column one duty rate is 3.4 percent *ad valorem*.

-Moisture Socks – are classifiable in subheading 6115.92.9000, HTSUS, which provides, in pertinent part, for other cotton knitted or crocheted

socks. The general column one duty rate is 13.5 percent *ad valorem*, quota category number is 332.

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.

With the exception of certain products of China, 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.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

EFFECT ON OTHER RULINGS:

NY L81820, dated January 11, 2005 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.

**REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF DISPOSABLE
COSTUMES PACKAGED WITH HEADPIECES AND BAGS**

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

ACTION: Revocation of treatment and revocation of ruling relating to the classification of disposable costumes packaged for retail sale with headpieces and bags.

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 revoking one ruling

letter relating to the tariff classification of disposable costumes packaged for retail sale with headpieces and bags under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on August 16, 2006, in Volume 40, Number 34, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 17, 2006.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Tariff Classification and Marking Branch, (202) 572-8822.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the tariff classification of disposable costumes packaged for retail sale with headpieces and bags was published in the August 16, 2006, CUSTOMS BULLETIN, Volume 40, Number 34. No comments were received. As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a rul-

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

In New York Ruling Letter (NY) L83457, dated April 26, 2005, CBP determined that the articles packaged together for retail sale (jumpsuit, headpiece, bag) were not a "retail set" within the meaning of the HTSUSA, and the jumpsuit and hat were classified separately. It was also noted that CBP could not rule on the bag without a fuller description of the type of fabric and construction, the fiber content by generic name, and the percent by weight of the exterior surface material. CBP further held that all three jumpsuit styles had met the flimsy, non-durable requirements for classification within Chapter 95 of the HTSUSA, and classified them in subheading 9505.90.6000, HTSUSA, which provides for "Festive, carnival or other entertainment articles, . . ."; the headpieces were classified in subheading 6505.90.8015, HTSUSA, which provides for "Hats and other headgear, . . .".

CBP has now determined that this merchandise is classified as GRI 3(b) "sets", with the jumpsuit providing the essential character, in subheading 9505.90.6000, HTSUSA, which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other". Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY L83457 and any other ruling not specifically identified, to reflect the proper classification of disposable costumes packaged for retail sale with headpieces and bags according to the analysis contained in Headquarters Ruling Letter (HQ) 967728, 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.

DATED: September 28, 2006

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 967728
September 28, 2006
CLA-2 RR:CTF:TCM 967728 ASM
CATEGORY: Classification
TARIFF NO.: 9505.90.6000

MS. SARA MAY
DAN DEE INTERNATIONAL LTD.
7282 123rd Circle North
Largo, FL 33773

RE: Revocation of NY L83457: Classification of Disposable Costumes packaged for retail sale with detachable headpieces and bags

DEAR MS. MAY:

This is in response to your request for reconsideration of the Customs and Border Protection (CBP) New York Ruling letter (NY) L83457, dated April 26, 2005, which classified certain disposable costumes packaged with headpieces and bags under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A single sample, identified as the "Devil Disposable Costume", was submitted to CBP for examination. In accordance with your request for reconsideration of NY L83457, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

Pursuant to section 625(c), Tariff Act of 1930, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY L83457 was published in the *Customs Bulletin*, Vol. 40, No. 34, on August 16, 2006. No comments were received in response to the notice.

FACTS:

The subject merchandise consists of disposable costumes identified as the "Devil Disposable Costume", "Scary Creature Disposable Costume", and the "Ghost Disposable Costume", which have been referenced in NY L83457 as "assortment number H559404RA". These items are described as disposable Halloween costumes for infants and have been constructed of non-woven fabric consisting of 90 percent polypropylene, 5 percent elastic, and 5 percent hook and loop fasteners. Each of the three styles consists of a costume, headpiece, and bag packaged together.

The costume submitted for our review is a jumpsuit that has been constructed with loose overlock stitching and straight stitching of a loose gauge. A decorative iron on appliqué design has been adhered to the front of the jumpsuit. Thin elastic, less than ¼ inch in width, has been sewn directly to the costume at the ankles, neck, and cuffs. Each leg panel has a split opening at the inside seam that allows the leg panels to be completely opened for diaper changes. There are six hook and loop fasteners attached to each leg panel for closure. There is a raw edged 3 inch slash opening at the back which closes with a hook and loop fastener. The neckline also has a raw

edge. Hook and loop fasteners have been sewn to the front and back neckline to form a secure attachment with the headpiece. With respect to the devil costume, a stylized tail has been stuffed with fiber filling and sewn to the back center seam of the costume.

The headpiece is constructed in five panels, with elastic, gathers, and darts to create a bonnet style headpiece. A string tie of matching fabric has been sewn to the lower edge to secure the headpiece. All other edges are unfinished/raw. With respect to the devil costume, two devil horns have been sewn to the top of the headpiece and incorporated into the seams which join the panels together at the crown. Hook and loop fasteners have been sewn to the lower edge so that the headpiece can fasten to the jumpsuit at the neckline.

The bag is a small rectangular tote that is approximately 5 inches wide x 7 inches long. The bag has two 3 ½ inch loop handles sewn to the inside edge of the bag, no lining, and an iron on appliqué with a stylized notation of the words "Trick or Treat".

In NY L83457, dated April 26, 2005, CBP determined that the articles packaged together for retail sale were not a "retail set" within the meaning of the HTSUSA, and the jumpsuit and hat were classified separately. It was also noted that CBP could not rule on the bag without a fuller description of the type of fabric and construction, the fiber content by generic name, and the percent by weight of the exterior surface material. CBP further held that all three jumpsuit styles had met the flimsy, non-durable requirements for classification within Chapter 95 of the HTSUSA, and classified them in subheading 9505.90.6000, HTSUSA, which provides for "Festive, carnival or other entertainment articles, . . .", the headpieces were classified in subheading 6505.90.8015, HTSUSA, which provides for "Hats and other headgear, . . .".

In setting forth a GRI 3 analysis, you arrive at the conclusion that the jumpsuit, hat, and bag are retail packaged and imported together as "goods put up in sets for retail sale" pursuant to GRI 3(b), with the jumpsuits providing the essential character. Thus, you assert that pursuant to a GRI 3(b) analysis, the retail sets, which include all three articles, would be classified as "festive articles" under subheading 9505.90.6000, HTSUSA, which provides for "Festive, carnival or other entertainment articles, . . .".

ISSUE:

Whether the subject articles, which are packaged together for sale and importation into the United States, are classifiable pursuant to a GRI 3(b) analysis as retail sets. What is the proper classification for the merchandise?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute 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 HTSUSA 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 subject merchandise contains three articles packaged together, which cannot be classified pursuant to a GRI 1 analysis because the articles are *prima facie*, classifiable in three different headings. If imported separately, the textile costume may be classifiable in heading 9505, HTSUSA, which provides, in part, for “Festive, carnival or other entertainment articles”, the hat would be classifiable in heading 6505, HTSUSA, which provides, in part, for “Hats or other headgear”, and the trick or treat bag may be classifiable in heading 4202, HTSUSA, which provides, in part, for “travel bags”.

When goods are, *prima facie*, classifiable in two or more headings, they must be classified in accordance with GRI 3, which provides in relevant part as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
- (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

* * *

GRI 3 establishes a hierarchy of methods for classifying goods that fall under two or more headings. GRI 3(a) states that the heading providing the most specific description is to be preferred to a heading, which provides a more general description. However, GRI 3(a) indicates that when two or more headings each refer to part only of the materials or substances in a composite good or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description than the other. In this case, the headings 9505, 6505, and 4202, HTSUSA, each refer to only part of the items in the set. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b).

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character and a determination must be made as to whether or not these are “goods put up in sets for retail sale”. In relevant part, the ENs to GRI 3(b) state:

- (VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.
- (VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined

by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

* * *

- (X) For the purposes of this Rule, the term “goods put up in sets for retail sale” shall be taken to mean goods which:
- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
 - (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
 - (c) are put up in a manner suitable for sale directly to users without repacking (*e.g.*, in boxes or cases or on boards).

In accordance with GRI 3(b), we find that the subject component articles are properly classified as “sets” because they consist of goods put up in a set for retail sale. In this instance, the bag is designed to coordinate with the Halloween costume in that it is constructed of the same fabric, bears a stylized “Trick or Treat” iron on appliqué, and is color coordinated to match the devil horns sewn to the headpiece. In addition, the bag is quite small (5 inches wide x 7 inches long) so that an older infant or toddler can easily grasp the handles and carry the bag for “Trick or Treating”. Thus, the jumpsuit/costume, coordinating hat and bag, are designed to carry out a specific activity, *i.e.*, “Trick or Treating” on Halloween. Furthermore, the components in this set are, *prima facie*, classifiable in different headings and have been put up in retail packaging suitable for sale directly to users without repacking.

There have been several court decisions on “essential character” for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. See, *Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), *affirmed*, 119 F. 3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), *rehearing denied*, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co., v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). See also, *Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), *affirmed*, 171 F. 3d 1370 (Fed. Cir. 1999).

The essential character of the subject sets can be determined by comparing each component as it relates to the use of the product. In this instance, it is the textile costume that imparts the essential character to the set. The jumpsuit is the largest component, uses the most material, and provides the wearer with an immediately recognizable character. Clearly, the jumpsuit was more costly to manufacture than the small tote bag and hat. In most instances, CBP has held that the costume and not the headgear imparts the essential character to a GRI 3(b) set. See Headquarters Ruling Letter (HQ) 959545, dated June 2, 1997, in which it was noted that by application of GRI 3(b), the “Cute and Cuddly Clown” hat, which was retail packaged with the costume was also classifiable under Chapter 62, HTSUSA, because the essential character of the set was determined by the garment.

In classifying the jumpsuit, we note that Heading 9505, HTSUSA, includes articles, which are “Festive, carnival, or other entertainment articles,

including magic tricks and practical joke articles; parts and accessories thereof". Note 1(e), Chapter 95, HTSUSA, excludes articles of "fancy dress, of textiles, of chapter 61 or 62" from classification in Chapter 95. In relevant part, the ENs to 9505 state that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

* * *

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (not being articles of postiche - heading 67.04), and paper hats. **However, the heading excludes fancy dress of textile materials, of Chapter 61 or 62.** [emphasis supplied]

The case of *Rubie's Costume Company v. United States*, 337 F.3d 1350 (Fed Cir. 2003), presented the question of whether CBP's decision in HQ 961447, dated July 22, 1998, merited deference when CBP determined that textile costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel were classifiable as duty free "festive articles" under subheading 9505.90.6090 (now 9505.90.6000), HTSUSA. The court found that HQ 961447 was entitled to deference and upheld the reasoning set forth in that ruling, which classified textile costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel, as "festive articles" in heading 9505, HTSUSA. Of particular relevance to the merchandise now in question is the fact that the court specifically noted that HQ 961447 had correctly compared functional and structural deficiencies of "festive article" costumes with the standard features found in "wearing apparel" in order to determine whether articles are properly classified in Chapter 95 or Chapters 61 and 62, HTSUSA.

HQ 961447 affirmed CBP's decision in HQ 959545, dated June 2, 1997, which responded to a domestic interested party petition filed pursuant to Section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516) and Title 19 Code of Federal Regulations Section 175.1 (19 C.F.R. 175.1). In HQ 959545, CBP set forth the criteria used to determine the textile costumes that were classifiable as "festive articles" in subheading 9505.90.6090, HTSUSA, and held that the "Witch of the Webs" (No. 11062), "Abdul Sheik of Arabia" (No. 15020), "Pirate Boy" (No. 12013), and "Witch" (No. 11005), were considered flimsy, lacking in durability, and not normal articles of apparel, and were properly classified as "Festive, carnival or other entertainment articles . . ." in heading 9505, HTSUSA. These textile costumes shared the following characteristics: There were no significant styling features and each costume had raw edges on fabrics that could "run" or fray. In assessing the subject costumes, we note that there is only one significant styling feature, i.e., a stuffed tail sewn to the back seam of the costume. All other features on the jumpsuit are flimsy and lacking in durability, sharing similarities to the flimsy costumes in HQ 959545. The neckline and all edges on the jumpsuit have been left raw and unfinished, the sewing is of poor quality with loose stitching, and the jumpsuit has a raw edged slash opening in the back with only one hook and loop closure.

Additional characteristics used to distinguish between textile costumes classifiable as "Festive articles" of Chapter 95, HTSUSA, and fancy dress of

Chapters 61 or 62, HTSUSA, have been set forth in CBP's Informed Compliance Publication (ICP), dated June 2006, entitled "What Every Member of the Trade Community Should Know About: Textile Costumes under the HTSUS". As noted in this ICP, we generally consider four areas in making classification determinations for textile costumes, i.e., "Styling", "Construction", "Finishing Touches", and "Embellishments". As noted in the ICP, the criteria used by CBP in determining what is meant by the terms "flimsy, non-durable" or "well-made" in order to classify textile costumes as festive articles in subheading 9505.90.6000, HTSUSA, or as fancy dress in Chapters 61 or 62, HTSUSA, has been set forth in the following rulings: HQ 957973, August 14, 1995; HQ 958049, August 21, 1995; HQ 958061, dated October 3, 1995; HQ 957948, May 7, 1996; HQ 957952, May 7, 1996; HQ 959545, June 2, 1997; HQ 959064, June 19, 1997; HQ 960805, August 22, 1997; HQ 960107, October 10, 1997; HQ 961447, July 22, 1998; HQ 962081, November 25, 1998; HQ 962184, November 25, 1998; and HQ 962441, March 26, 1999.

With regard to "Styling", the examples provided in the ICP note that a "flimsy" costume of Chapter 95, HTSUSA, would have little or no styling. The subject jumpsuit has only one "Styling" feature with a fiber filled tail sewn to the back seam. The ICP also provides examples of flimsy "Construction" elements, which include an assessment of the neckline and seams, e.g., raw edges and loose stitching at the seams. The jumpsuit has a raw edged neckline with no facing or protective edging and the garment has been constructed with loose stitching. The ICP notes that flimsy "Finishing Touches" include thin elastics ($\frac{1}{4}$ inch in width) sewn directly to the fabric, raw edges, and a hook and loop closure. All of the exposed edges have been left raw, the jumpsuit has thin elastic (less than $\frac{1}{4}$ inch in width) that is sewn directly to the fabric at the wrists and ankles, and a slash opening in the back which has hook and loop tab closures. The ICP notes that embellishments are usually minor components of a costume, but are considered flimsy and non-durable if glued or otherwise insufficiently attached to the costume. There is only a single embellishment on the front of the costume, which is an iron on appliqué design.

In view of the foregoing, we find that the subject merchandise, identified in NY L83457 as "assortment number H559404RA", is properly classified as retail sets pursuant to a GRI 3(b) analysis and that the jumpsuit imparts the essential character to the set. Although we concur with NY L83457 that the jumpsuits are flimsy, non-durable, and classifiable in subheading 9505.90.6000, HTSUSA, we find that NY L83457 incorrectly classified the jumpsuit and headpiece separately rather than as a GRI 3(b) set.

HOLDING:

The subject merchandise, identified as the "Devil Disposable Costume", "Scary Creature Disposable Costume", and the "Ghost Disposable Costume" (referenced in NY L83457 as "assortment number H559404RA"), packaged for retail sale with a jumpsuit, headpiece, and bag, are properly classified as GRI 3(b) "sets", with the jumpsuit providing the essential character, in subheading 9505.90.6000, HTSUSA, which provides for "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Other". This provision is "Free" at the general column one rate of duty.

EFFECT ON OTHER RULINGS:

NY L83457, dated April 26, 2005, is hereby revoked.

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.

