

U.S. Customs and Border Protection

CBP Decisions

RE-ACCREDITATION AND RE-APPROVAL OF SGS NORTH AMERICA INC., AS A COMMERCIAL GAUGER AND LABORATORY

[CBP Dec. 07-65]

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

ACTION: Notice of re-approval of SGS North America Inc., of Corpus Christi, Texas, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, SGS North America Inc., 925 Corn Products Road, Corpus Christi, Texas 78409, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the U. S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the U. S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of SGS North America Inc., as a commercial gauger and laboratory became effective on November 2, 2006. The next triennial inspection date will be scheduled for November 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breau, Laboratories and Scientific Services, U. S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: August 21, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, August 28, 2007 (72 FR 49298)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, August 29, 2007

The following documents of U.S. 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,
Executive Director,
Regulations and Rulings Office of Trade.

**PROPOSED MODIFICATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
CLASSIFICATION OF CERTAIN COATED FABRICS**

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

ACTION: Proposed modification of a classification ruling letter and revocation of treatment relating to the classification of certain coated fabrics.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is proposing to modify a ruling letter relating to the classification of certain coated fabrics. CBP is also proposing to modify or revoke any treatment previously accorded by it to substantially identical merchandise.

DATE: Comments must be received on or before October 12, 2007.

ADDRESS: Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229.

Submitted comments may be inspected at the offices of Customs and Border Protection, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify a ruling letter pertaining to the classification of certain coated fabrics. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) M81369, dated March 23, 2006 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is pro-

posing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY M81369, CBP ruled, in part, that two woven fabrics coated on one side with a layer of clear polyurethane coating were classified in heading 5407, HTSUS, which provides for "woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404." Since the issuance of that ruling, CBP has reviewed the classification of the coated fabrics and has determined that the cited ruling is in error as it pertains to these fabrics.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY M81369 and is proposing to revoke or modify any other ruling not specifically identified, to reflect the classification of these coated fabrics according to the analysis contained in proposed Headquarters Ruling Letter (HQ) W968299, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: August 21, 2007

Cynthia Reese for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
NY M81369
March 23, 2006
CLA-2-59:RR:NC:TA:350 M81369
CATEGORY: Classification
TARIFF NO.: 5407.42.0060; 5407.52.2060; 5903.20.2500

MR. JACKSON CHUANG
SYNTHETIC RSOURCES, INC.
22772 Centre Drive, Suite 260
Lake Forest, CA 92630

RE: The tariff classification of four plastics coated textile fabrics, for use in the manufacture of banners and luggage items, etc., from either Thailand or Taiwan.

DEAR MR. CHUANG:

This letter replaces Ruling Number L89783, dated November 16, 2005, which contained a typographical error. Specifically, with respect to style 16802420AU, the yarn construction was incorrectly stated with respect to denier and yarn count. This did not, however, affect the final classification of the merchandise. A complete corrected ruling follows:

In your letter, that was received January 17, 2006, which was a follow-up to an earlier inquiry where we requested additional information, you requested a tariff classification ruling.

We will be retaining the samples that you submitted. Please be aware that any style numbers referred to in a binding ruling should be the same as those indicated on any shipping documents, such as invoices, etc. This is to facilitate the classification of the merchandise at the respective port of entry.

The first item, style 6004530AU, consists of an oxford woven fabric (600D x 600D/45 x 30) which is dyed black and is composed of 100% textured polyester man-made fibers. This material has been coated on one side with a clear polyurethane plastics coating that is not in sufficient quantity to be visible to the naked eye. You provided the following weight specifications for this material:

Wt. Of Fabric: 7 0oz/y² (73%) Wt. Of PU: 1.8 oz/y² (23%)

Total Wt.: 8.8 oz/y² (100%)

The second item, style 10502220AU, consists of a 100% nylon woven, basket weave fabric (1050D x 1050D/22 x 20) which is dyed black and is composed of 100% textured polyester man-made fibers. This material is plain dyed and has been coated on one side with a clear polyurethane plastics coating which is not in sufficient quantity to be visible to the naked eye. You provided the following weight specifications for this material:

Wt. Of Fabric: 12.4 0oz/y² (86.2%) Wt. Of PU: 2.0 oz/y² (13.8%)

Total Wt.: 14.4 oz/y² (100%)

Note 2 to Chapter 59, Harmonized Tariff Schedule of the United States, (HTS), defines the scope of heading 5903, under which textile fabrics which are considered to be coated, covered, impregnated, or laminated with plastics. In addition, it provides guidance on the classification of combinations of textile and plastics.

Specifically, Note 2 states in part that heading 5903, HTS, applies to: (a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than: (1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60): for the purposes of this provision, no account should be taken of any resulting change in color; Since the plastic coatings on the two fabrics described above are not visible to the naked eye, these fabrics are not considered to be coated fabrics for the purposes of classification in heading 5903, HTS.

The third item, style 10003424AU, consists of a 100% woven air textured nylon oxford fabric (1000D x 1000D/34 x 24) that is dyed black. This material has been coated on one side with a clear polyurethane plastics coating that is in sufficient quantity to be visible to the naked eye. You provided the following weight specifications for this material:

Wt. Of Fabric: 8 6oz/y² (86%) Wt. Of PU: 1.4 oz/y² (14%)

Total Wt.: 10 oz/y² (100%)

The fourth and final item, style 16802420AU, consists of a 100% woven filament nylon oxford fabric (1680D x 1680D/24 x 20) that is dyed black. This material has been coated on one side with a clear polyurethane plastics coating that is in sufficient quantity to be visible to the naked eye. You provided the following weight specifications for this material:

Wt. Of Fabric: 11.39 oz/y² (88%) Wt. Of PU: 1.55 oz/y² (12%)

Total Wt.: 12.94 oz/y² (100%)

The applicable subheading for style 6004530AU will be 5407.52.2060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404, other woven fabrics, containing 85 percent or more by weight of textured polyester filaments, dyed, other, weighing more than 170 g/m². The duty rate will be 14.9 percent ad valorem.

The applicable subheading for style 10502220AU will be 5407.42.0060, Harmonized Tariff Schedule of the United States (HTSUS), which provides for woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404, other woven fabrics, containing 85 percent or more by weight of filaments of nylon or other polyamides, dyed, weighing more than 170 g/m². The duty rate will be 14.9 percent ad valorem.

The applicable subheading for styles 10003424AU and 16802420AU will be 5903.20.2500, Harmonized Tariff Schedule of the United States (HTSUS), which provides for textile fabrics impregnated, coated, covered or laminated, with plastics, with polyurethane, of man-made fibers, not over 70 percent by weight of rubber or plastics. The rate of duty will be 7.5 percent ad valorem.

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

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 Deborah Walsh at 646-733-3044.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ W968299
CLA-2 OT:RR:CTF:TCM W968299 KSH
CATEGORY: Classification
TARIFF NO.: 5903.20.2500

WILLIAM R. RUCKER, ESQ.
DRINKER BIDDLE GARDNER & CARTON
191 N. Wacker Drive, Suite 3700
Chicago, Illinois 60606-1698

RE: Modification of NY M81369; woven fabric coated with polyurethane plastics.

DEAR MR. RUCKER:

This letter is in response to your request of July 7, 2006 and supplemental letter of August 3, 2006, on behalf of your client Synthetic Resources, Inc., for reconsideration of New York Ruling Letter (NY) M81369, dated March 23, 2006, as it pertains to the classification of two woven fabrics coated on one side with polyurethane plastics under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). NY M81369 addressed the classification of four fabrics. However, the instant request for reconsideration only involves two of the styles.

In NY M81369, we determined that the coated fabrics were classified in heading 5407, HTSUSA. They were classified in subheading 5407.52.2060, HTSUS, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, containing 85 percent or more by weight of textured polyester filaments: Dyed: Other, Weighing more than 170 g/m²." We have reviewed that ruling and found it to be in error.

FACTS:

The two sample fabrics at issue are identified as style 6004530AU and style 10502220AU. They are woven and coated on one side with a clear polyurethane coating. The fabrics are used to create backpacks, luggage and similar articles. Style 6004530AU is a textured polyester oxford woven fabric made from 600 denier polyester thread. The weight of the polyester is 7.0 oz/yd² and comprises 79.55% of the weight of the fabric. The clear polyurethane coating weighs 1.8 oz./yd.² and comprises 20.45% of the weight of the fabric. Style 10502220AU is a nylon basket weave woven fabric made from 1050 denier nylon thread. The weight of the nylon is 12.4 oz./yd² and comprises 86.11% of the weight of the fabric. The clear polyurethane coating weighs 2.0 oz/yd² and comprises 13.89% of the total weight of the fabric.

ISSUE:

Whether the fabrics are classified in heading 5407, HTSUSA, as woven fabrics of synthetic filament yarn, or in heading 5903, HTSUSA, as textile fabrics impregnated, coated, covered or laminated with plastics.

LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation of the Harmonized Tariff Schedule at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. It is Customs and Border Protection's (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 5407, HTSUSA, provides for the classification of "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404." Materials of heading 5404, HTSUS, include, in part, "strip and the like (for example, artificial straw) of synthetic textile materials of an apparent width not exceeding 5 mm."

Heading 5903, HTSUSA, provides for "[t]extile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902." Note 2 to Chapter 59 provides, in pertinent part:

Heading 5903 applies to:

(a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than:

(1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye . . .; for the purpose of this provision, no account should be taken of any resulting change of color.

The EN to heading 5903, HTSUSA, provides in relevant part:

This heading covers textile fabrics which have been impregnated, coated, covered or laminated with plastics (e.g., poly(vinyl chloride)).

Such products are classified here whatever their weight per m² and whatever the nature of the plastic component (compact or cellular), **provided:**

(1) That, in the case of impregnated, coated or covered fabrics, the impregnation, coating or covering can be seen with the naked eye otherwise than by a resulting change in colour.

Textile fabrics in which the impregnation, coating or covering cannot be seen with the naked eye or can be seen only by reason of a resulting change in colour usually fall in **Chapters 50 to 55, 58 or 60**. Examples of such fabrics are those impregnated with substances designed solely to render them crease-proof, moth-proof, unshrinkable or waterproof (e.g., waterproof gabardines and poplins). Textile fabrics partially coated or

partially covered with plastics and bearing designs resulting from these treatments are also classified in **Chapters 50 to 55, 58 or 60**.

It is undisputed that the subject fabric has been coated with a clear polyurethane layer. At issue is whether this coating is visible to the naked eye. If the coating is not visible to the naked eye, the fabrics will be excluded from heading 5903, HTSUSA, and will be classified in heading 5407, HTSUSA.

A fabric is considered a fabric of heading 5903, HTSUSA, if its impregnation, coating or covering of plastics is visible to the naked eye as required by Note 2(a)(1) to Chapter 59, HTSUSA, with no account taken of any resulting change in color. It is CBP's longstanding view that the wording of Note 2(a)(1), "visible to the naked eye," is a clear expression by the drafters of the Harmonized System that a significant, if not substantial, amount of material must be added to a fabric for it to be considered impregnated, coated or covered. The plastic material added to the fabric must be visibly distinguishable from the fabric without the use of magnification. CBP believes this criterion is satisfied when the application of plastics material visibly affects the surface character of the fabric (Headquarters Ruling (HQ) 967884, dated October 26, 2005); the plastic is visible in the interstices of the fabric (See HQ 961172, dated August 6, 1998); the thread or weave is blurred or obscured, (HQ 089772, September 11, 1991); or the surface of the fabric is leveled or smoothed and the coating itself creates a distinct visible pattern (Id.). These factors are not exclusive and none is determinative. See HQ W968300, dated February 8, 2007.

No account should be taken of any resulting change in only shine, reflectivity, dullness or other property which causes the viewer to see the effect rather than presence of plastic material. See generally HQ 967884, dated October 26, 2005, on the classification of certain pants with polyurethane coating; HQ 082219, dated November 21, 1988, on the classification of three fabrics; HQ 085245, dated August 31, 1989, on the classification of a men's nylon coat made of certain coated fabrics; HQ 087941, dated December 12, 1990, on the classification of certain fusible interlining fabrics from Japan; and HQ 084165, dated June 26, 1989, on the classification of certain fusible interlining fabrics.

Applying the "visible to the naked eye" test on the fabrics of style 6004530AU and style 10502220AU, using normally corrected vision in a well-lighted room, we find that the clear polyurethane coating has filled the gaps in the interstices. Accordingly, the coating is visible to the naked eye and the fabrics are classified in heading 5903, HTSUSA.

Our decision is in accord with HQ 950103, dated November 7, 1991, NY 885395, dated June 21, 1993 and NY A85467, dated August 13, 1998, in which substantially similar merchandise was classified in heading 5903, HTSUSA.

HOLDING:

By application of GRI 1, the fabrics are classified in heading 5903, HTSUSA. They are provided for in subheading 5903.20.2500, HTSUSA, which provides for "Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: With polyurethane: Of man-made fibers: Other: Other." The general column one rate of duty is 7.5% *ad valorem*.

Merchandise classified in subheading 5903.20.2500, HTSUSA, falls within textile category 229. Quota/visa requirements are no longer applicable for

merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations 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 <http://otexa.ita.doc.gov>.

EFFECT ON OTHER RULINGS:

NY M81369 is hereby modified.

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