

U.S. Customs and Border Protection

General Notices

APPROVAL OF INSPECTORATE AMERICA CORPORATION, AS A COMMERCIAL GAUGER

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

ACTION: Notice of approval of Inspectorate America Corporation, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Inspectorate America Corporation, Plot 49 Castle Coakley St., Christiansted, St. Croix, VI 00820, has been approved to gauge petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is 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 cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved guagers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The approval of Inspectorate America Corporation, as commercial gauger became effective on January 15, 2008. The next triennial inspection date will be scheduled for January 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington DC 20229, 202-344-1060.

Dated: April 10, 2008

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

[Published in the Federal Register, April 21, 2008 (73 FR 21361)]

COUNTRY OF ORIGIN MARKING FOR THE REPUBLIC OF KOSOVO

AGENCIES: Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

ACTION: Notice of policy.

SUMMARY: On February 18, 2008, the United States recognized the Republic of Kosovo as a sovereign and independent state and announced that full diplomatic relations would begin immediately. This document notifies the public of the name and English spelling that is to be used for country of origin marking on merchandise imported into the United States from the Republic of Kosovo. The notice also establishes a transition period during which Customs and Border Protection (CBP) will permit the importation of merchandise from the newly independent state with the marking, "Serbia."

EFFECTIVE DATE: April 23, 2008.

FOR FURTHER INFORMATION CONTACT: Richard Mojica, Regulations and Rulings, Office of International Trade, (202) 572-8789.

SUPPLEMENTARY INFORMATION:

Background

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Customs and Border Protection (CBP) has authority pursuant to 19 U.S.C. 1304 to determine the character of the words and phrases or abbreviations thereof that will be acceptable as indicating the country of origin, and may require the addition of any other words or symbols which may be appropriate to prevent deception or mistake as to the origin of the article.

In view of the political independence of the Republic of Kosovo, and in recognition of their independent status by the United States as of February 18, 2008, merchandise originating in that country and imported into the United States is subject to marking with the English name of the independent state. The short form English name of the newly independent country is: "Kosovo." It is acceptable for merchandise to be marked using long form names such as "Republic of Kosovo," provided that the short form name is part of the phrase.

Recognizing that manufacturers and importers may need time to adjust to these changes, and that an abrupt change could cause undue hardship, CBP will permit goods from the Republic of Kosovo to be marked “Serbia” until February 18, 2009. After that date, all merchandise originating in the Republic of Kosovo will be required to be marked with the new names as set forth above.

Dated: April 16, 2008

DANIEL BALDWIN,
Assistant Commissioner,
Office of International Trade,
U.S. Customs and Border Protection.

[Published in the Federal Register, April 23, 2008 (73 FR 21970)]

Docket No. USCBP-2008-0049

**Notice of Meeting of The Departmental Advisory Committee
on Commercial Operations of Customs and Border Protec-
tion and Related Homeland Security Functions (COAC)**

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

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (popularly known as “COAC”) will meet on May 9, 2008 in Washington, DC. The meeting will be open to the public.

DATE: COAC will meet Friday, May 9th from 9 a.m. to 1 p.m. Please note that the meeting may close early if the committee has completed its business. If you plan to attend, please contact Ms. Wanda Tate on or before Tuesday, May 6, 2008.

ADDRESSES: The meeting will be held at the Ronald Reagan Building in the Horizon Ballroom, 1300 Pennsylvania Avenue, NW, Washington, DC 20004. Written material and comments should reach the contact person listed below by May 2nd. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by May 2, 2008. Comments must be identified by USCBP-2008-0049 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 the docket number in the subject line of the message.

- **Fax:** 202-344-2064.

- **Mail:** Ms. Wanda Tate, Office of International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Room 8.5C, Washington, DC 20229.

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 International Affairs and Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, 1300 Pennsylvania Ave., NW., Room 8.5C, Washington, DC 20229; traderelations@dhs.gov; telephone 202-344-1440; facsimile 202-344-2064.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C., app.), DHS hereby announces the meeting of the Departmental Advisory Committee on Commercial Operations of U.S. Customs and Border Protection and Related Homeland Security Functions (COAC). COAC is tasked with providing advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within DHS or the Department of the Treasury.

The sixth meeting of the tenth term of COAC will be held at the date, time and location specified above. A tentative agenda for the meeting is set forth below.

Tentative Agenda

1. Post Incident Response.
2. Advance Trade Data (“10+2”).
3. Secure Freight Initiative.
4. C-TPAT (Customs-Trade Partnership Against Terrorism) and CSI (Container Security Initiative).
5. Conveyance Security Devices.
6. ACE (Automated Commercial Environment) Programs Status/ITDS (International Trade Data Systems).
7. International Trade Issues/Updates.
8. Import Safety Initiatives.
9. World Customs Organization & Mutual Recognition Status.
10. Proposed Revisions to In-Bond Process.
11. Automated Export System (AES).
12. Agriculture Program Update.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Participation in COAC deliberations is limited to committee members, Department of Homeland Security officials, and persons invited to attend the meeting for special presentations.

All visitors to the Ronald Reagan building will have to go through a security checkpoint to be admitted to the building. Since seating is limited, all persons attending this meeting should provide notice, preferably by close of business Tuesday, May 6, 2008, to Ms. Wanda Tate, Office of Trade Relations, U.S. Customs and Border Protection, Department of Homeland Security, Washington, DC 20229, telephone 202-344-1440; facsimile 202-344-2064.

Information on Services for Individuals With Disabilities

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

Dated: April 17, 2008

MICHAEL C. MULLEN,
Assistant Commissioner,
Office of International Affairs and Trade Relations.

[Published in the Federal Register, April 23, 2008 (73 FR 21971)]

**PROPOSED COLLECTION; COMMENT REQUEST LINE
RELEASE REGULATIONS**

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

ACTION: 60-Day Notice and request for comments; Extension of existing collection of information: 1651-0060

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Line Release Regulations (Border Release Advance Screening and Selectivity (BRASS)). This request for comment is being made pursuant to the Paperwork Reduction Act (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 23, 2008, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs and Border Protection. Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border

Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Line Release Regulations (BRASS)

OMB Number: 1651-0060

Form Number: NIA

Abstract: Line release (BRASS) was developed to release and track high volume and repetitive shipments. Line release (BRASS) respondents make an automated submission by transmitting bar code information to CBP. BRASS is intended to expedite the processing of merchandise entering the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 25,700

Estimated Time Per Respondent: 15 minutes

Estimated Total Annual Burden Hours: 6,425

Dated: April 16, 2008

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

**APPROVAL OF INTERTEK USA, INC.,
AS A COMMERCIAL GAUGER**

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

ACTION: Notice of approval of Intertek USA, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Intertek USA, Inc., 139 Castle Coakley Suite #8, St. Croix, VI 00820, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is 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 cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The approval of Intertek USA, Inc., as commercial gauger became effective on January 15, 2008. The next triennial inspection date will be scheduled for January 2011.

FOR FURTHER INFORMATION CONTACT: Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: April 18, 2008

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

[Published in the Federal Register, April 25, 2008 (73 FR 22429)]

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

Washington, DC, April 23, 2008

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 International Trade.*

**PROPOSED REVOCATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN ELECTRIC
FIREPLACES**

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of certain electric fireplaces.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to revoke a ruling letter relating to the tariff classification of certain electric fireplaces under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before June 6, 2008.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Regulations and Rulings of the Office of International Trade, Attention: Commercial Trade and 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: Richard Mojica, Tariff Classification and Marking Branch: (202) 572-8789.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of certain electric fireplaces. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) R03085, dated January 20, 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 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 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 R03085, CBP determined that the subject electric fireplaces were classifiable under subheading 9516.79.0000, HTSUS, which provides for “[e]lectric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: [o]ther electrothermic appliances: [o]ther.” Since the issuance of the ruling, CBP has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY R03085 and any other ruling not specifically identified, to reflect the proper classification of the electric fireplaces according to the analysis contained in proposed Headquarters Ruling Letter H005076, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: April 18, 2008

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

Attachments



[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
NY R03085
January 20, 2006
CLA-2-85:RR:NC:N1:113 R03085
CATEGORY: Classification
TARIFF NO.: 8516.79.0000

MS. LINDA HAMANAKA
KEN HAMANAKA CO., INC.
5777 West Century Boulevard, # 760
Los Angeles, CA 90045

RE: The tariff classification of an electric fireplace from China

DEAR MS. HAMANAKA:

In your letter dated January 11, 2006, on behalf of Dagan Industries, Inc., you requested a tariff classification ruling.

The merchandise is a freestanding electric fireplace designed to be placed against a wall in a home. It gives the appearance of an actual fireplace, but

emits minimal heat. The fireplace has a wooden housing measuring approximately 46 inches wide and 16 inches deep.

The applicable subheading for the electric fireplace will be 8516.79.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other electrothermic appliances, other. The rate of duty will be 2.7 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 the 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 imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 646-733-3018.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H005076
CLA-2 OT: RR: CTF: TCM H005076 RM
CATEGORY: Classification
TARIFF NO.: 8516.29.0090

MS. LINDA HAMANAKA,
KEN HAMANAKA CO., INC.
5777 West Century Boulevard, #760
Los Angeles, CA 90045

RE: Request for reconsideration of New York Ruling Letter R03085, dated January 20 2006; Classification of an electric fireplace

DEAR MS. HAMANAKA:

We have reviewed New York Ruling (NY) R03085, dated January 20, 2006, issued to Dagan Industries, concerning the tariff classification of an electric fireplace and found it to be in error. In that ruling, Customs and Border Protection (CBP) determined that the subject electric fireplace was classifiable under subheading 8516.79.0000, Harmonized Tariff Schedule of the United States (HTSUS). Our revised ruling follows.

FACTS:

The merchandise at issue is a freestanding electric fireplace designed to be placed in front of a wall. The unit is fitted with an electric heater with a blower as well as colored lamps and a flicker device to imitate coal or wood fire. The heater is encased in a wooden housing that is 46 inches wide, 16 inches deep and 22 inches tall.

ISSUE:

What is the correct tariff classification of the electric fireplace under the HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

8516 Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:

* * *

Electric space heating apparatus and electric soil heating apparatus:

* * *

8516.29.00 Other. . . .

* * *

Portable Space heaters:

8516.29.0030 Fan-forced. . . .

* * *

8516.29.0090 Other. . . .

* * *

Other electrothermic appliances:

* * *

8516.79.0000 Other. . . .

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

There is no dispute that the subject merchandise is classified in heading 8516, HTSUS. What is at issue is whether the electric fireplace is included in the scope of subheading 8516.29, HTSUS, as an “electric space heating apparatus,” or under subheading 8516.79, HTSUS, as an “other electrothermic appliance.”

GRI 6 provides that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to GRIs 1 through 5, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

Subheading 8516.29, HTSUS, provides for “electric space heating apparatus.” The term “space heater” is not defined in the HTSUS. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. See *Rocknel Fastener, Inc. v. United States*, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’” *Id.* (quoting *C.J. Tower & Sons of Buffalo, Inc. v. United States*, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982); *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). Finally, the explanatory notes, while not binding law, offer guidance as to how tariff terms are to be interpreted. See *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003) (noting explanatory notes are “intended to clarify the scope of HTSUS subheadings and to offer guidance in their interpretation”).

Webster’s Third New International Dictionary (unabridged ed.; 1993) defines “space heater” as: “a self-contained unit that warms a room or space by converting to heat in that space the fuel or electric energy supplanted to it.” The Random House Dictionary of the English Language (unabridged ed.; 1973) defines “space heater” as: “a small furnace for air in the room in which it is situated.” Merriam-Webster’s Dictionary Online defines “space heater” as: “a usu. portable appliance for heating a relatively small area.” (<http://www.m-w.com/cgi-bin/dictionary>; March 25, 2008).

Based on the definitions stated above, we find the electric fireplace at issue to be “a small furnace”¹ that “warms a room or space” by “converting to heat . . . the electric energy supplanted to it.” Moreover, the unit is fitted with an electric heater with a blower capable of heating a “relatively small area” or “the room in which it is situated.” Accordingly, it is classifiable under subheading 8516.29, HTSUS, the *eo nomine* provision for electric space heaters.²

Our conclusion is consistent with the ENs to heading 8516, HTSUS, which provide, in pertinent part:

(B) ELECTRIC SPACE HEATING APPARATUS AND SOIL HEATING APPARATUS

This group includes:

(2) **Electric Fires (fan heaters and radiant heaters)**, including portable types with parabolic reflectors and sometimes with built-in fans. Many of these fires are fitted with colored lamps and flicker devices to imitate a coal or wood fire.

¹The term “furnace” is defined by Merriam-Webster’s Dictionary Online as: “an enclosed structure in which heat is produced (as for heating a house or for reducing ore).” (<http://www.merriam-webster.com/dictionary/furnace>).

²In NY N003331, dated December 6, 2006, CBP classified a freestanding electric fireplace under subheading 8516.29.0090, HTSUS.

The subject fireplace is fitted with an electric heater and blower (i.e., a built-in fan). Moreover, it has colored lamps and a flicker device to imitate a coal or wood fire. Thus, it is the type of “space heating apparatus,” specifically “electric fire,” described in the ENs to heading 8516, HTSUS.

We now turn to whether the electric fireplace is a “portable” space heater. The term “portable” is not defined in the HTSUS. Webster’s Third New International Dictionary (unabridged ed.; 1993) defines “portable” as: “1. Capable of being carried: easily or conveniently transported: light or manageable enough to be readily moved (a — grill) (a — power drill).” The Compact Edition of the Oxford English Dictionary (1987) defines “portable” as: “1. Capable of being carried by hand or on the person; capable of being moved from place to place; easily carried or conveyed . . .” The Random House Dictionary of the English Language (unabridged ed.; 1973) defines “portable” as: “1. Capable of being transported or conveyed; a portable stage; 2. Easily carried or conveyed by hand: a portable typewriter . . .” Merriam-Webster’s Dictionary Online defines portable as: “1. a: capable of being carried or moved about [a portable TV] . . .” (<http://www.m-w.com/cgi-bin/dictionary>; March 25, 2008).

In HQ 964803, dated January 10, 2002, we discussed the portability of barbecue grills. The eleven grill models at issue in that ruling weighed between 175 and 300 pounds (without propane tanks) and had cooking compartments of steel, and frames constructed of steel, stainless steel, or steel and wood. The grills were approximately four feet tall, five feet wide and two feet deep. All of the grills had castors or wheels. There, we found that, even though the grills could be “moved from place to place” via their wheels, they were “not easily carried or conveyed by hand” and “not of the class or kind of article normally considered by the industry to be portable.”

Similarly, the instant electric fireplace is designed for fixed use in a living room. See Facts. While it is “capable of being moved from place to place,” is not “easily carried or conveyed by hand” or “capable of being carried by hand or on the person.” Moreover, there is a separate type of space heater that the industry considers to be portable because they are smaller, lighter, and easier to move. See, e.g., NY M86531, dated October 13, 2006; NY R03588, dated April 14, 2006; and NY 869033, dated December 2, 1991. The applicable subheading for the electrical fireplace is 8516.29.0090, HTSUS.

HOLDING:

By application of GRI 1 through GRI 6, the subject electric fireplace is classifiable in subheading 8516.29.0090, HTSUS, which provides for: “[e]lectric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: [e]lectric space heating apparatus and electric soil heating apparatus: [o]ther: [o]ther. The 2008 general, column one rate of duty is 3.7 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY R03085, dated January 20, 2006, is hereby revoked.

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

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**PROPOSED REVOCATION OF RULING LETTERS
AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF
CERTAIN PORCELAIN TOOTHPICK HOLDERS**

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

ACTION: Notice of proposed revocation of tariff classification ruling letters and proposed revocation of treatment relating to the classification of certain porcelain toothpick holders.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U. S. Customs and Border Protection (CBP) intends to revoke two ruling letters New York Ruling (“NY”) A88963 and Headquarters Ruling Letter (“HQ”) 960657 relating to the tariff classification of certain porcelain toothpick holders under the Harmonized Tariff Schedule of the United States Annotated (HTSUS). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before: June 6, 2008.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Regulations and Rulings of the Office of International Trade, Attention: Commercial Trade and 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: John Rhea, Tariff Classification and Marking Branch: (202) 572–8785.

SUPPLEMENTARY INFORMATION:**BACKGROUND**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke two ruling letters pertaining to the tariff classification of certain porcelain toothpick holders. Although in this notice, CBP is specifically referring to the revocation of NY A88963 and HQ 960657 (Attachment A and B) of 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 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 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 the above mentioned rulings, CBP determined that the subject porcelain toothpick holders were classifiable under heading 6911, HTSUS, and specifically subheading 6911.90.00, HTSUS, which provides for: “. . . other household articles . . . of porcelain or china.” Based upon our analysis of heading 6911, HTSUS, we have determined that the Porcelain Toothpick Holders are properly classified in subheading 6911.10.80, HTSUS, which provides for: “Tableware, kitchenware . . . of porcelain or china . . .”

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY A88963 and HQ 960657 and any other ruling not specifically identified, to reflect the proper classification of the porcelain toothpick holder according to the analysis contained in proposed HQ 005207 and HQ 005209, set forth as Attachments C and D 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 18, 2008

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

Attachments:

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[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY A88963
November 12, 1996
CLA-2-69: RR:NC:2: 227 A88963
CATEGORY: Classification
TARIFF NO.: 6911.90.0050

MR. JOE SCHMID
JS INTERNATIONAL CUSTOM HOUSE BROKER
110 West Ocean Blvd., Suite 307
Long Beach, CA 90802

RE: The tariff classification of porcelain toothpick holders from Taiwan.

DEAR MR. SCHMID:

In your letter dated October 18, 1996, on behalf of Gift Creations, Inc., you requested a tariff classification ruling.

The merchandise at issue is porcelain toothpick holders that are of the class or kind of articles which will be used in the household area.

It is noted that these items may be classified under subheading 6911.10.8090, Harmonized Tariff Schedule of the United States (HTS), which provides for other tableware and kitchenware of porcelain. However,

since the subject merchandise is of the kind that will be principally utilized in the household area (and not restricted for table or kitchen use), consideration of classification under the above subheading is precluded. The applicable subheading for the porcelain toothpick holders will be 6911.90.0050, Harmonized Tariff Schedule of the United States (HTS), which provides for other household articles of porcelain. The rate of duty will be 7.6 percent ad valorem.

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 letter 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 George Kalkines at 212-466-5794.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ 960657
June 9, 1998
CLA-2 RR:CR:GC 960657 PH
CATEGORY: Classification
TARIFF NO.: 4421.90.50; 6911.10.80; 6911.90.00

PORT DIRECTOR OF CUSTOMS
1000 2nd Avenue
Seattle, Washington 98104-10409

RE: Protest 3001-97-100168; toothpick holder; toothpicks; tableware; other household articles; GRIs 2(b); 3(b); ENs GRI Rule 3(b)(VII), (VIII), (IX); 69.11; 69.12; common and commercial meaning; ejusdem generis; United States v. Butler Bros., 33 CCPA 22 (1945); M. Pressner & Co. v. United States, 2 Cust. Ct. 763, Abstract 51652 (1939); Nippon Kogaku, Inc. v. United States, 69 CCPA 89 (1982); Nylos Trading Company v. United States, 37 CCPA 71 (1949); Winter-Wolff, Inc., v. United States, CIT Slip Op. 98-15; Sports Graphics, Inc. v. United States, 24 F.3d 1390 (Fed. Cir. 1994); F. L. Smidth & Co. v. United States, 56 CCPA 77 (1969); House Conf. Report 100-576, April 20, 1988; NYs A88963; 838469

DEAR PORT DIRECTOR:

This is our decision on protest 3001-97-100168, against your classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain porcelain toothpick holders with toothpicks. A sample was provided.

FACTS:

The merchandise is invoiced as "PORCELAIN MILK CAN TOOTHPICK HOLDER W/12 PCS TOOTHPIC[K]S". The sample is in the shape of a miniature milk can, approximately 2 and 1/4 inches high, with an outside diameter at the base of approximately 1 and 3/4 inches and at the opening of ap-

proximately 1 inch. There is a country scene, with a cow, affixed to the article. Twelve wooden toothpicks, wrapped in cellophane, are included with the sample.

The merchandise was entered on September 2, 1996, with classification under subheading 6911.10.80, HTSUS. The entry was liquidated (under "no change" liquidation procedures) on December 13, 1996, as entered.

The importer's broker filed this protest with Customs on March 12, 1997, against the classification of the merchandise.

Citing General Rule of Interpretation (GRI) 3(b), the protestant contends that the essential character of the article is imparted by the toothpick holder, on the basis of the "much greater value and ornate design of the porcelain toothpick holder as compared to the 12 toothpicks." Citing New York (NY) ruling A88963 dated November 12, 1996, the protestant contends that toothpick holders such as those under consideration would be principally used in the household area and not restricted to table or kitchen use and, accordingly, should be classified as other household articles of porcelain in subheading 6911.90.00, HTSUS.

The subheadings under consideration are as follows:

- 4421.90.50: Other articles of wood:
- Other:
- Toothpicks, skewers, candy sticks, ice cream sticks, tongue depressors, drink mixers and similar small wares:
- Toothpicks.
- The 1996 general column one rate of duty for goods classifiable under this provision is 2.5% ad valorem.
- 6911.10.80: Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:
- Tableware and kitchenware:
- Other:
- Other:
- Other:
- Other.
- The 1996 general column one rate of duty for goods classifiable under this provision is 25% ad valorem.
- 6911.90.00: Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: . . .
- Other.
- The 1996 general column one rate of duty for goods classifiable under this provision is 7.6% ad valorem.

ISSUE:

Whether the toothpick holder and 12 toothpicks are classifiable as toothpicks in subheading 4421.90.50, HTSUS, other tableware of porcelain or china in subheading 6911.10.80, HTSUS, or other household articles of porcelain or china in subheading 6911.90.00, HTSUS.

LAW AND ANALYSIS:

Initially, we note that the protest was timely filed (i.e., within 90 days after but not before the notice of liquidation; see 19 U.S.C. 1514(c)(3)(A)) and the matter protested is protestable (see 19 U.S.C. 1514(a)(2) and (5) and *LG Electronics U.S.A., Inc., v. United States*, 991 F. Supp. 668 (CIT 1997), distinguishing between “automatic liquidation” and “no change liquidation” procedures and holding the latter to be protestable decisions under 19 U.S.C. 1514).

Classification of merchandise under the HTSUS is governed by accordance with the General Rules of Interpretation (GRI's), taken in order. GRI 1 states in part that, for legal purposes, classification shall be determined 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. GRI 2(b) provides that any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances, any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance, and the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3. GRI 3(b) provides that when goods are prima facie classifiable under two or more headings, classification of 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 GRI 3(a) (by reference to the heading which provides the most specific description), shall be classified as if they consisted of the material or component which gives them their essential character.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89–80, published in the Federal Register August 23, 1989 (54 FR 35127, 35128).

EN GRI Rule 3(b)(VII) and (VIII) state:

(VII) In all these cases [including composite goods consisting of different materials or components] 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.

The merchandise under consideration is a composite good consisting of different components (the toothpick holder and the toothpicks) prima facie

classifiable under two different headings (the toothpicks under heading 4421, HTSUS; the toothpick holders under heading 6911, HTSUS) (see the examples in EN GRI Rule 3(b)(IX)). The protestant concedes that the essential character of the merchandise is provided by the toothpick holder, on the basis of its value compared to the toothpicks and its ornate design. In the absence of any evidence to the contrary (e.g., addressing the criteria set forth in EN GRI Rule 3(b)(VIII), above), we so hold. Accordingly, pursuant to GRI 3(b), the merchandise is classifiable as if it consisted of the toothpick holders only.

Tariff terms are to be construed in accordance with their common and commercial meanings which are presumed to be the same (*Nippon Kogaku, Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380 (1982); see also *Nylos Trading Company v. United States*, 37 CCPA 71, 73, C.A.D. 423 (1949), and *Winter-Wolff, Inc., v. United States*, CIT Slip Op. 98-15 (Customs Bulletin and Decisions, March 25, 1998, vol. 32, no. 12, 71, at 74, “When, however, a tariff term is not clearly defined by the statute or its legislative history, it is also fundamental that the correct meaning of the tariff term is presumed to be the same as its common or dictionary meaning in the absence of evidence to the contrary”). The dictionary definition of “tableware” is “china, glassware, silver, and other utensils used for setting a table or serving food and drink” (Webster’s Third New International Dictionary of the English Language, Unabridged (1993), tableware; see also Random House Unabridged Dictionary (2d. Ed., 1993), tableware “the dishes, utensils, etc., used at the table”).

In interpreting the term “tableware” in previous tariff schedules, the Courts have relied upon the dictionary definition of the term (see *United States v. Butler Bros.*, 33 CCPA 22, C.A.D. 310 (1945); *United States v. The Baltimore & Ohio R.R.*

Co., 47 CCPA 1, C.A.D. 719 (1959); *W. Kay Company, Inc. v. United States*, 53 Cust. Ct. 130, C.D. 2484 (1964). In *Butler Bros.*

(*supra* at 28), described as “the leading case” in *W. Kay Company* (*supra* at 136), the Court stated:

We think it is evident from the dictionary definitions of the term “tableware” that in using that term in paragraph 212, *supra*, the Congress intended to provide for only such articles as are chiefly used upon a table for the service of meals. . . .

In *W. Kay Company* (*supra* at 136-137), the Court lists a number of articles which had been held not to be tableware under the then applicable tariff schedules. Among those articles are decorated china toothpick holders, in the case of *M. Pressner & Co. v. United States*, 2 Cust. Ct. 763, Abstract 41652 (1939).

Although decisions by the Courts interpreting the TSUS are not to be deemed dispositive in interpreting the HTS, “. . . on a case-by-case basis prior decisions should be considered instructive in interpreting the HTS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTS” (House Conf. Report 100-576, April 20, 1988, pp.

549-550, 100th Cong., 2d Sess. (1988 U.S.C.C.A.N. 1547, 1582-1583); see also *F. L. Smidth & Co. v. United States*, 56 CCPA 77, 80, C.A.D. 958, 409 F.2d 1369 (1969)). Use of the cited Court cases to interpret the term “tableware” is consistent with the foregoing. Further, the interpretation of the term in the cited Court cases is consistent with the common, dictionary defi-

inition of the term, in fact the interpretation is based on that definition (see *Nippon Kogaku* and other cases cited *supra*, for the proposition that tariff terms are to be construed in accordance with their common and commercial meanings which are presumed to be the same).

A “holder” is defined as “a device or contrivance by which or a container in which something is held” (Webster’s Third New International Dictionary, *supra*, holder; see also Random House Unabridged Dictionary, *supra*, holder “something that holds or secures”). A “toothpick” is defined as “a slender pointed piece of wood used after eating to remove bits of food lodged between the teeth [or] a similar instrument of metal, bone, or plastic used for picking the teeth and cleaned for reuse” (Webster’s Third New International Dictionary, *supra*, toothpick; see also Random House Unabridged Dictionary, *supra*, toothpick “a small pointed piece of wood, plastic, etc., for removing substances, esp. food particles, from between the teeth”). Thus, “when [these definitions are] cobbled together” (see Winter-Wolff, *supra* at 79), the term “toothpick” may be defined as “something in which is held a slender pointed piece of wood, plastic, or bone for removing substances, especially food, from between the teeth.”

Thus, although a toothpick holder may be placed on the table (or alternatively, it may not be placed on the table; see, e.g., *M. Pressner & Co.*, *supra*, in which the Court found that the toothpick holders were “used on knick-knack tables and shelves”), it is not used “for setting a table or serving food and drink” (“setting a table” is defined as “to distribute or arrange china, silver, etc., for use on (a table): to set the table for dinner” (Random House Unabridged Dictionary, *supra*, set)). In fact, a toothpick holder is used for holding toothpicks which are used after food or drink is served, or may be used for removing substances other than food from the teeth (i.e., they may not be connected with food (see Random House Unabridged Dictionary definition of “toothpick”, *supra*)).

The exemplars in EN 69.12 (EN 69.11 refers to EN 69.12, which describes the merchandise covered by both headings) for tableware are consistent with the dictionary definition of “tableware” and with treating toothpick holders as other than tableware. Heading 69.11 states, in part:

The headings [i.e., headings 69.11 and 69.12] therefore include:

(A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes and trays of all kinds, coffee-pots, teapots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, spoons and serviette rings.

Each of these exemplars is an article “. . . used for setting a table or serving food and drink” (Webster’s Third New International, *supra*, tableware). That (i.e., setting a table or serving food and drink) is the essential characteristic which unites the exemplars listed in EN 69.12. Based on the definitions of tableware and toothpick holders (see above), toothpick holders are not *eiusdem generis* with the tableware exemplars listed in EN 69.12.

The Courts describe the rule of *eiusdem generis*, as applied to tariff classification cases, as follows:

Under the rule of *eiusdem generis*, which means “of the same kind,” where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. . . . As applicable to classification cases, *eiusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be clas-

sified under the general terms. [*Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1392 (Fed. Cir. 1994), citing *Nissho-Iwai Am. Corp. v. United States*, 10 CIT 154, 157, 641 F.

Supp. 808 (1986)]

Thus, the applicable EN, as interpreted under the rule of *ejusdem generis*, supports the dictionary definition and Court interpretations of the term tableware under past tariff schedules in precluding classification of the toothpick holders as tableware in subheading 6911.10.80, HTSUS. We conclude that the toothpick holders are classifiable as other household articles in subheading 6911.90.00, HTSUS.

HOLDING:

The toothpick holder and 12 toothpicks are classifiable as other household articles of porcelain or china in subheading 6911.90.00, HTSUS.

The protest is GRANTED. In accordance with Section 3A(11)(b) of Customs Directive 099 3550-065, dated August 4, 1993, Subject: Revised Protest Directive, this decision should be mailed, with the Customs Form 19, 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 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 Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act, and other public access channels.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H005207
CLA-2 OT:RR:CTF:TCM H005207 JER
CATEGORY: Classification
TARIFF NO.: 6911.10.80; 6912.00.48

MR. JOE SCHMID
JS INTERNATIONAL
CUSTOM HOUSE BROKER
110 West Ocean Blvd., Suite 307
Long Beach, CA 90802

RE: Classification of Porcelain, China and Ceramic Toothpick Holders; Revocation of NY A88963

DEAR MR. SCHMID:

This is in regard to New York Ruling Letter (NY) Ruling A88963, dated November 12, 1996 issued to you for the tariff classification of the above captioned product under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, U.S. Customs and Border Protection (CBP) determined that the product referred to as "The Porcelain Toothpick Holder" was

classified in heading 6911, HTSUS, specifically subheading 6911.90.00, HTSUS, which provides, in relevant part, for household articles of porcelain or china.

We have recently revisited this issue and for the reasons set forth below, CBP presently considers a “Toothpick Holder” made of porcelain or china to be classified under heading 6911, HTSUS and specifically subheading 6911.10.80 HTSUS, as other tableware, kitchenware of porcelain or china. Likewise, a toothpick holder made of ceramic shall be classified under subheading 6912.00.48, HTSUS, as other tableware, kitchenware not of porcelain or china.

FACTS:

The merchandise in issue was described as a porcelain toothpick holder.

ISSUE:

Whether a “Toothpick Holder” should be classified as tableware, kitchenware under subheading 6911.10.80, HTSUS, or as other household article under subheading 6911.90.00, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

When the subheadings, rather than the headings are at issue, GRI 6 is applied. GRI 6 provides in pertinent part that: “the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes, and mutatis mutandis, to [rules 1 through 5] on the understanding that only subheadings at the same level are comparable for the purposes of this rule and the relative section and chapter notes also apply, unless the context otherwise requires.”

The HTSUS headings and subheadings under consideration are as follows:

6911	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:
6911.10	Tableware and kitchenware:
	Other:
	Other:
	Other:
	* * *
6911.10.80	Other
	* * *
6911.90.00	Other

6912.00 Ceramic tableware, kitchenware, other household articles and toilet articles, other than porcelain or china:

Tableware and kitchenware:

Other:

Other:

Other:

* * *

6912.00.48 Other

* * *

6912.00.50 Other

* * *

NY A88963 based its classification on the rationale that a toothpick holder could be located in any room of the house (not just the kitchen) and therefore classified the product under the provision for other household articles rather than as tableware or kitchenware. The decision in NY A88963 narrowly construed the scope of the heading and thereby failed to give meaning to terms of the heading as indicated in the Explanatory Notes to heading 6911, HTSUS. As a result, NY A88963 reasoned that a toothpick holder should be treated as an item within the same class or kind as utilitarian household articles of heading 6911, HTSUS.

In cases where a term is not defined in the section notes, chapter notes or the ENs of the HTSUS, it is construed in accordance with its common and commercial meaning. Unless a contrary legislative intent is shown, tariff terms are construed in accordance with their common and commercial meanings, which are presumed to be the same. Nippon Kogaku (USA), Inc. v. United States, 673 F.2d 380, 382 (1982); Schott Optical Glass, Inc. v. United States, 612 F.2d 1283, 1285 (1979). Absent an express definition, however, dictionaries, lexicons, scientific authorities, and other such reliable sources may be consulted to determine common meaning. C.J. Tower & Sons of Buffalo, Inc. v. United States, 673 F.2d 1268, 1271 (1982). By definition, the term tableware includes those items traditionally used in serving food or associated with table settings. See Webster's Collegiate Dictionary, 1195, 10th ed., (2001) (tableware is defined as: "utensils {as of china, glass or silver} for table use). The definition of kitchenware is, "utensils and appliances for use in a kitchen." Webster's Collegiate Dictionary at 643. Moreover, a "toothpick" is defined as a "slender pointed piece of wood used after eating to remove food lodged between the teeth." Webster's Third New International Dictionary of the English Language, Unabridged (1993). A "holder" is defined as a "device or container in which something is held." *Id.* It follows that the common and commercial meaning of a toothpick holder firmly suggests that its primary usage is associated with foods and that its primary location is therefore associated with kitchen areas if not the dining table.

In addition to the dictionary definitions, the exemplars set forth in the Explanatory Notes ("ENs") to heading 6911, HTSUS, indicate the type of goods considered to be within the class or kind classifiable as tableware and kitchenware. The ENs to heading 6911, HTSUS, while not legally binding or

dispositive, provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The ENs to heading 6912 (and by reference to heading 6911) HTSUS, state in pertinent part that:

[t]he headings therefore include:

(A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes . . . sugar bowls, beer mugs, cups . . . salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, spoons and serviette rings.

(B) Kitchenware such as stew-pans, casseroles of all shapes and sizes, baking or roasting dishes, basins, pastry or jelly moulds, kitchen jugs, preserving jars, storage jars and bins (tea caddies, bread bins, etc.), funnels, ladles, graduated kitchen capacity measures and rolling-pins.

(C) Other household articles such as ashtrays, hot water bottles and matchbox holders.

According to the ENs to heading 6911, HTSUS, and dictionary definitions, tableware and kitchenware of this heading are articles immediately associated with food preparation, food storage and food consumption.³ Unlike household articles, the articles listed in the ENs to heading 6911, HTSUS, as tableware and kitchenware, can be used in a variety of table and kitchen related functions. For instance, such merchandise can be used in the preparation of food and beverage items or act as table settings. These articles may also store or display foods as well as serve food and beverage items.

In HQ 087602, dated, February 13, 1991, we noted that the ENs to heading 6911, HTSUS, distinguish between household articles and kitchenware articles. Whereas the latter category includes such sundries as ashtrays, hot water bottles and the like, the subject provision covers kitchenware such as storage jars, measuring utensils and baking dishware. Likewise, in NY R03430, dated March 29, 2006, CBP classified a toothpick holder made of ceramic in heading 6912, HTSUS, and specifically subheading 6912.00.48, HTSUS, as tableware and kitchenware. We stated in NY R03430, that the article was intended to be placed on a (kitchen) table, countertop or the like.

In order to fully discern whether the instant toothpick holder is classifiable as a household article or more appropriately as tableware and kitchenware, we refer to the statutory construction known as the rule of *ejusdem generis*. In Sports Graphics, Inc. v. United States, the Court noted that:

“As applicable to classification cases, *ejusdem generis* (which means “of the same kind”) requires that the imported merchandise possess the essential character or purpose that unite the articles enumerated *eo nomine*, in order to be classified under the general terms. (24 F. 3D 1390, 1392, Fed. Cir 1994), citing Nissho-Iawai Am. Corp. v. United States, 10 CIT 154, 157, 641 F. Supp. 808 (1986).

³Note that for purposes of this discussion a reference made to food(s) encompasses a reference to ingredients, beverages and other items associated therein.

Those articles enumerated *eo nomine* (which means “by name”) in the ENs to heading 6912, HTSUS (and by reference, 6911, HTSUS) among other things, have as their primary purpose(s) to hold, display, store, prepare and serve food items. Without question, toothpicks are used in connection with the consumption of foods, with the serving of h’orderves, mixed drinks and for removing food particles from between the teeth. Additionally, according to our research, toothpick holders are marketed in retail sections under kitchenware, cookware or dining.⁴ Hence, the character and purpose of this item suggests that it be used in close connection with dining areas, food and beverage preparation or consumption.

The U.S. Court of International Trade (CIT) has provided factors to apply when determining whether merchandise falls within a particular class or kind. They include among other things: “general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale, use in the same manner as merchandise which defines the class . . . and recognition in the trade of this use.” See *Kraft, Inc. v. United States*, USITR, 16 CIT 483, (June 24, 1992). Insofar as the use of a toothpick holder is associated with dining, food preparation and food consumption, it would appear that this merchandise falls within the class or kind of those articles enumerated *eo nomine* in heading 6911, HTSUS, as tableware and kitchenware. Conversely, a toothpick holder is not used in a manner similar to an ashtray, hot water bottle or other utilitarian household articles. Instead it is used in a substantially similar manner as other merchandise classified as either tableware or kitchenware.

CBP has on several occasions ruled that items closely connected with serving food, storing certain foods and merchandise ancillary to other kitchen or table articles, are merchandise classifiable as either tableware or kitchenware. For example, in NY A81749, dated May 14, 1996, we stated that a porcelain tea bag holder was tableware of heading 6911, HTSUS, despite its limited association with the actual consumption of tea. Likewise, in NY N006490, we classified a ceramic condiment bowl as tableware in heading 6912, HTSUS. These items are of the same class or kind enumerated in the headings at issue as either tableware or kitchenware.

By contrast, we have classified certain (ceramic) articles unassociated with food consumption, food storage or food preparation under heading 6912, HTSUS, as other household articles. For example, in NY 885897, dated June 15, 1993, CBP classified a ceramic “memo holder” as a household article of heading 6912, HTSUS. Similarly, in HQ 964364, dated January 9, 2001, CBP classified a ceramic “Treasured Heart Box” as a household article of heading 6912, HTSUS. Likewise, in NY 818767, dated February 26, 1996, we classified a hand-held “teddy bell” as a household article of heading 6912, HTSUS, because its functional purpose was that of a household bell.

We find that the scope of the heading as indicated by the ENs to heading 6911, HTSUS, demonstrate a distinction between household articles and articles classifiable as either tableware or kitchenware. We do not agree that a toothpick holder is a general household item located in any area of the

⁴See generally, *Kitchen & Dining*, Wexner Center Store at <http://store.wexnercenterstore.com>; *Kitchenware*, CNKC Kitchenware Co. Ltd www.kitchenwarecn.com; *Toothpick Holders*, Stainless Steel Kitchenware.com www.stainless-steel-kitchenware.com/toothpick-holders.html

house. By contrast, we find that the expectation of the consumer would in all reasonable contemplation, not place a toothpick holder in a den, bedroom or study but rather in the kitchen area or dining area. Based on the analysis above, we find that a toothpick holder is *ejusdem generis* with those articles enumerated *eo nomine* in heading 6911, HTSUS, and by reference, heading 6912, HTSUS, and therefore is classifiable as tableware and kitchenware.

HOLDING:

For the reasons set forth above and by application of GRI 1, the subject “Porcelain Toothpick Holder” is classified under heading 6911, HTSUS, and specifically subheading 6911.10.80 which provides for: “Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.” The 2008 column one, general rate of duty is 20.8% *ad valorem*.

By application of GRI 1, a “Ceramic Toothpick Holder” is classified in heading 6912 HTSUS, and specifically subheading 6912.00.48 which provides for: “Ceramic tableware, kitchenware, other household articles and toilet articles, other than porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.” The 2008 column one, general rate of duty is 9.8% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY Ruling Letter A88963, dated November 12, 1996, is hereby revoked.

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

HQ H005209

CLA-2 OT:RR:CTF:TCM H005209 JER

CATEGORY: Classification

TARIFF NO.: 6911.10.80; 6912.00.48

DAVID G. PORTER

FINGERHUT CORPORATION

4400 Baker Road, Suite 228

Minnetonka, MN 55343

RE: Classification of Porcelain, China and Ceramic Toothpick Holders; Revocation of HQ 960657

DEAR MR. PORTER:

This is in regard to Headquarters Ruling Letter (“HQ”) 960657, dated June 9, 1998, issued for the tariff classification of the above captioned products under the Harmonized Tariff Schedule of the United States (HTSUS). In this ruling letter, U.S. Customs and Border Protection (CBP) determined that the product referred to as a “Toothpick Holder” was classifiable as other household articles in subheading 6911.90.00, HTSUS, rather than as a tableware or kitchenware articles in subheading 6911.10.80, HTSUS. Based

on the decision in HQ 960657, subheading 6911.90.00 HTSUS would apply to a porcelain toothpick holder and subheading 6912.00.50 would apply to a ceramic toothpick holder.

HQ 960657 is a Headquarters ruling on Protest 3001-97-100168. Under *San Francisco Newspaper Printing Co. v. United States*, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of Protest 3001-97-100168 was final on both the protestant and CBP. Therefore, this decision has no effect on those entries.

We have recently revisited this issue and for the reasons set forth below, CBP presently considers a “Toothpick Holder” made of porcelain or china to be classified under heading 6911, HTSUS and specifically subheading 6911.10.80 HTSUS, as other tableware, kitchenware of porcelain or china. Likewise, a toothpick holder made of ceramic shall be classified under subheading 6912.00.48, HTSUS, as other tableware, kitchenware not of porcelain or china.

FACTS:

The merchandise in HQ 960657 was described as a porcelain milk can toothpick holder and was in the shape of a miniature milk can. It was described as having a one inch opening at the top and being approximately 2 ¼ inches in height. There was a cow and country scene depicted on the article. Twelve wooden toothpicks were included with the sample.

ISSUE:

Whether a “Toothpick Holder” should be classified as tableware, kitchenware under subheading 6911.10.80, HTSUS, or as other household article under subheading 6911.90.00, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (“GRIs”). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

When the subheadings, rather than the headings are at issue, GRI 6 is applied. GRI 6 provides in pertinent part that: “the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes, and *mutatis mutandis*, to [rules 1 through 5] on the understanding that only subheadings at the same level are comparable for the purposes of this rule and the relative section and chapter notes also apply, unless the context otherwise requires.”

The item consists of more than one component which in addition to the toothpick holder includes twelve wooden toothpicks. Therefore, the item is not specifically provided for at the heading level and cannot be classified solely on the basis of GRI 1. HQ 960657 found that the subject merchandise was a composite good consisting of different components.

GRI 3 (b) provides that when, by application of rule 2(b), goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

- (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.

While not legally binding nor dispositive, the Explanatory Notes provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80. The ENs to GRI 3 (b) provide in pertinent part:

(IX) For purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, **provided** these components are adapted one to the other and are mutually complementary and that together they form a whole which would normally be offered for sale in separate parts.

The Explanatory Notes to GRI 3 (b) further provide in part:

(X) For 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) consists 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 re-packing (e.g., in boxes or cases or on boards).

We find that the subject merchandise does not meet the terms of Explanatory Note (IX) to GRI 3 (b) as the holder and toothpicks are not adapted one to the other and do not form a whole. Therefore, they are not classifiable as a composite good. Instead we consider the instant merchandise to be classifiable as “goods put up for retail sale” as a set according to Explanatory Note (X) to GRI 3 (b).

We find that the toothpick holder rather than the actual toothpicks, by reason of its function and essential nature, imparts the essential character of the toothpick holder “set” as a whole. Hence, our analysis will discuss the subject merchandise as a retail set whose activity is to hold, display and to make toothpicks readily accessible.

The HTSUS provisions under consideration are as follows:

6911	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:
6911.10	Tableware and kitchenware:
	Other:
	Other:
	Other:
	* * *
6911.10.80	Other
	* * *
6911.90.00	Other

6912.00 Ceramic tableware, kitchenware, other household articles and toilet articles, other than porcelain or china:

Tableware and kitchenware:

Other:

Other:

Other:

* * *

6912.00.48 Other

* * *

6912.00.50 Other

* * *

HQ 960657 based its classification on the position that toothpick holders are not tableware but rather general household articles. In HQ 960657, CBP reasoned that by its common and commercial meaning, tableware is limited to utensils chiefly used for setting a table or serving food or drinks. We find that the reasoning in HQ 960657 relied too heavily upon court cases interpreting the previous tariff schedules and did not fully consider the structure of the HTSUS. Likewise, HQ 960657 narrowly interpreted the scope of the heading and also failed to consider that the heading includes both tableware and kitchenware articles. As noted in H. Conf. Rep. No. 576, p.550, decisions by the Customs Service and courts interpreting nomenclature under the TSUS are not deemed dispositive in interpreting the HTSUSA. Nevertheless, on a case-by-case basis, TSUS decisions should be considered instructive, in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. In this instance, a dissimilar interpretation is indicated by the text of the HTSUS, which provides for tableware and kitchenware. By definition, the term tableware includes those items traditionally used in serving food or associated with table settings. See Webster's Collegiate Dictionary, 1195, 10th ed., (2001) (tableware is defined as: "utensils {as of china, glass or silver} for table use.") However, we find that the scope of the heading as it relates to either tableware or kitchenware is not limited to articles "chiefly used upon a table to serve foods."

In cases where a term is not defined in the section notes, chapter notes or the ENs of the HTSUS, it is construed in accordance with its common and commercial meaning. Unless a contrary legislative intent is shown, tariff terms are construed in accordance with their common and commercial meanings, which are presumed to be the same. Nippon Kogaku (USA), Inc. v. United States, 673 F.2d 380, 382 (1982); Schott Optical Glass, Inc. v. United States, 612 F.2d 1283, 1285 (1979). Absent an express definition, however, dictionaries, lexicons, scientific authorities, and other such reliable sources may be consulted to determine common meaning. C.J. Tower & Sons of Buffalo, Inc. v. United States, 673 F.2d 1268, 1271 (1982). The definition of kitchenware is, "utensils and appliances for use in a kitchen." Webster's Collegiate Dictionary at 643. Moreover, a "toothpick" is defined as a "slender

pointed piece of wood used after eating to remove food lodged between the teeth.” Webster’s Third New International Dictionary of the English Language, Unabridged (1993). A “holder” is defined as a “device or container in which something is held.” Id. It follows that the common and commercial meaning of a toothpick holder firmly suggests that its primary usage is associated with foods and that its primary location is therefore associated with kitchen areas if not the dining table.

In addition to the dictionary definitions, the exemplars set forth in the ENs to heading 6911, HTSUS, indicate the type of goods considered to be within the class or kind classifiable as tableware and kitchenware.

The ENs to heading 6912 (and by reference to heading 6911) HTSUS, state in pertinent part that:

[t]he headings therefore include:

(A) Tableware such as tea or coffee services, plates, soup tureens, salad bowls, dishes . . . sugar bowls, beer mugs, cups . . . salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, spoons and serviette rings.

(B) Kitchenware such as stew-pans, casseroles of all shapes and sizes, baking or roasting dishes, basins, pastry or jelly moulds, kitchen jugs, preserving jars, storage jars and bins (tea caddies, bread bins, etc.), funnels, ladles, graduated kitchen capacity measures and rolling-pins.

According to the ENs to heading 6911, HTSUS, and dictionary definitions, tableware and kitchenware of this heading can be used in a variety of table and kitchen related functions which are not limited to table settings. For instance, such merchandise can remain exposed to public view, used in the preparation of food and beverage items or act as a table setting. These articles may also store or display foods as well as serve food and beverage items. In HQ 087602, dated, February 13, 1991, we noted that the ENs to heading 6911, HTSUS, distinguish between household articles and kitchenware articles. Whereas the latter category includes such sundries as ashtrays, hot water bottles and the like, the subject provision covers kitchenware such as storage jars, measuring utensils and baking dishware. Unlike household articles, the articles listed in the ENs to heading 6911, HTSUS, as tableware and kitchenware are immediately associated with food preparation, food storage and food consumption.⁵

In order to fully discern whether the instant toothpick holder is classifiable as a household article or more appropriately as tableware and kitchenware, we refer to the statutory construction known as the rule of *ejusdem generis*. In Sports Graphics, Inc. v. United States, the Court noted that:

“As applicable to classification cases, *ejusdem generis* (which means “of the same kind”) requires that the imported merchandise possess the essential character or purpose that unite the articles enumerated *eo nomine*, in order to be classified under the general terms. (24 F. 3D 1390, 1392, Fed. Cir 1994), citing Nissho-Iawi Am. Corp. v. United States, 10 CIT 154, 157, 641 F. Supp. 808 (1986).

⁵Note that for purposes of this discussion a reference made to food(s) encompasses a reference to ingredients, beverages and other items associated therein.

Those articles enumerated *eo nomine* (which means “by name”) in the ENs to heading 6912, HTSUS (and by reference, 6911, HTSUS) among other things, have as their primary purpose(s) to hold, display, store, prepare and serve food items. The provisions at issue are sufficiently broad in their scope to include tableware articles which are not exclusively used upon a table for the sole purpose of serving food and to include kitchenware articles which have functions similar to and indicative of the subject toothpick holder.

The U.S. Court of International Trade (CIT) has provided factors to apply when determining whether merchandise falls within a particular class or kind. They include among other things: “general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale, use in the same manner as merchandise which defines the class . . . and recognition in the trade of this use.” See *Kraft, Inc. v. United States*, USITR, 16 CIT 483, (June 24, 1992). Insofar as the use of a toothpick holder is associated with dining, food preparation and food consumption, it would appear that this merchandise falls within the class or kind of those articles enumerated *eo nomine* in heading 6911, HTSUS, as tableware and kitchenware. Conversely, a toothpick holder is not used in a manner similar to an ashtray, hot water bottle or other utilitarian household articles. Instead it is used in a substantially similar manner as other merchandise classified as either tableware or kitchenware.

CBP has on several occasions ruled that items closely connected with serving food, storing certain foods and merchandise ancillary to other kitchen or table articles, are merchandise classifiable as either tableware or kitchenware. For example, in NY A81749, dated May 14, 1996, we stated that a porcelain tea bag holder was tableware of heading 6911, HTSUS, despite its limited association with the actual consumption of tea. Likewise, in NY N006490, we classified a ceramic condiment bowl as tableware in heading 6912, HTSUS. These items are of the same class or kind enumerated in the headings at issue. Finally, in NY R03430, dated March 29, 2006, CBP classified a toothpick holder made of ceramic in heading 6912, HTSUS, and specifically subheading 6912.00.48, HTSUS, as tableware and kitchenware. We stated in NY R03430, that the article was intended to be placed on a (kitchen) table, countertop or the like.

By contrast, we have classified certain (ceramic) articles unassociated with food consumption, food storage or food preparation under heading 6912, HTSUS, as other household articles. For example, in NY 885897, dated June 15, 1993, CBP classified a ceramic “memo holder” as a household article of heading 6912, HTSUS. Similarly, in HQ 964364, dated January 9, 2001, CBP classified a ceramic “Treasured Heart Box” as a household article of heading 6912, HTSUS. Likewise, in NY 818767, dated February 26, 1996, we classified a hand-held “teddy bell” as a household article of heading 6912, HTSUS, because its functional purpose was that of a household bell. Furthermore, we find that the expectation of the consumer would in all reasonable contemplation, not place a toothpick holder in a den, bedroom or study but rather in the kitchen area or dining area. Without question, toothpicks are used in connection with the consumption of foods, with the serving of h’orderves, mixed drinks and for removing food particles from between the teeth. Additionally, according to our research, toothpick holders are mar-

keted in retail sections under kitchenware, cookware or dining.⁶ Hence, the use of this item suggests that it be used in close connection with dining areas, food and beverage preparation or consumption.

Based on the analysis above, we find that a toothpick holder is *ejusdem generis* with those articles enumerated *eo nomine* in heading 6911, HTSUS, and by reference, heading 6912, HTSUS, and therefore is classifiable as tableware and kitchenware.

HOLDING:

For the reasons set forth above and by application of GRI 3 (b), the subject “Porcelain Toothpick Holder” set is classified under heading 6911, HTSUS, and specifically subheading 6911.10.80 which provides for: “Tableware, kitchenware, other household articles and toilet articles, of porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.” The 2008 column one, general rate of duty is 20.8% *ad valorem*.

By application of GRI 3(b), a “Ceramic Toothpick Holder” set is classified in heading 6912 HTSUS, and specifically subheading 6912.00.48 which provides for: “Ceramic tableware, kitchenware, other household articles and toilet articles, other than porcelain or china: Tableware and kitchenware: Other: Other: Other: Other.” The 2008 column one, general rate of duty is 9.8% *ad valorem*.

EFFECT ON OTHER RULINGS:

HQ 960657 dated June 9, 1998, is hereby revoked.

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

19 CFR PART 177

**REVOCATION OF RULING LETTERS AND REVOCATION
OF TREATMENT RELATING TO CLASSIFICATION OF
4-(AMINOMETHYL)-BENZOIC ACID**

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

ACTION: Notice of revocation of a ruling letter and treatment relating to the classification of 4-(Aminomethyl)-benzoic acid, CAS 56–91–7, imported in bulk from China.

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

⁶See generally, *Kitchen & Dining*, Wexner Center Store at <http://store.wexnercenterstore.com>; *Kitchenware*, CNKC Kitchenware Co. Ltd www.kitchenwarecn.com; *Toothpick Holders*, Stainless Steel Kitchenware.com www.stainless-steel-kitchenware.com/toothpick-holders.html

interested parties that CBP is revoking a ruling concerning the classification of 4-(Aminomethyl)-benzoic acid, CAS 56-91-7, imported in bulk from China, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation was published on March 12, 2008, in Volume 42, Number 12, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 6, 2008.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, Tariff Classification and Marking Branch (202) 572-8784.

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), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the CUSTOMS BULLETIN, Volume 42, No. 12, on March 12, 2008, proposing to revoke New York Ruling Letter (NY) H85776, dated February 14, 2002, and any treatment accorded to substantially

identical transactions. No Comments were received in response to the notice.

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., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the notice period.

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

In NY H85776, CBP ruled that 4-(Aminomethyl)-benzoic acid is classified in subheading 2922.49.80, HTSUS, the provision for "Oxygen-function amino-compounds: Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof: Other: Other: Other: Other." The referenced ruling is incorrect because the chemical substance at issue contains a benzene ring and is therefore an aromatic compound provided for in heading 2922.49.30, HTSUS, the provision for "Oxygen-function amino-compounds: Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof: Other: Aromatic: Other: Other: Products described in additional U.S. note 3 to section VI."

Pursuant to section 625(c)(1), CBP is revoking NY H85776, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) H007659, which is set forth as an attachment to this notice. Additionally, pursuant to section 625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: April 18, 2008

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H007659
April 18, 2008
CLA-2 OT:RR:CTF:TCM H007659 ARM
CATEGORY: CLASSIFICATION
TARIFF NO.: 2922.49.30

MR. JOSEPH J. CHIVINI
AUSTIN CHEMICAL COMPANY, INC.
1565 Barclay Blvd.
Buffalo Grove, Illinois 60089

Re: Revocation of NY H85776; 4-(Aminomethyl)-benzoic acid, CAS 56-91-7, imported in bulk from China

DEAR MR. CHIVINI:

This is in reference to New York Ruling Letter (NY) H85776, issued on February 14, 2002, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of 4-(Aminomethyl)-benzoic acid, CAS 56-91-7, imported in bulk from China. In that ruling, CBP classified the merchandise in subheading 2922.49.8000, HTSUS, which provides for "Oxygen-function amino-compounds: Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof: Other: Other: . . . Other."

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the CUSTOMS BULLETIN, Volume 42, No. 12, on March 12, 2008, proposing to revoke New York Ruling Letter (NY) H85776, dated February 14, 2002, and any treatment accorded to substantially identical transactions. No comments were received in response to the notice.

FACTS:

In NY H85776, the subject product is described as an aromatic amino acid ester indicated for use in research and development. Customs and Border Protection (CBP) laboratory report # NY20011240, dated February 6, 2002, states, in pertinent part, the following:

Product Name: 4-Aminomethyl-Benzoic Acid

CAS Registry Name: Benzoic Acid, 4-(Aminomethyl)-

CAS Registry Number: 56-91-7

Which is not listed in the chemical appendix HTSUS 2001.

Importer's stated use: Research & Development

Report: The product is an aromatic compound containing carboxylic acid and mono-amine functional groups.

A page copyrighted to the 2002 American Chemical Society is attached to the laboratory report showing the chemical formula to be $C_8H_9NO_2$. Below the formulaic information is an image of the structure. The structure contains HO_2C and CH_2-NH_2 molecules bonded to a benzene ring.

ISSUE:

Whether 4-(Aminomethyl)-benzoic acid, CAS 56-91-7, is classified at the 8 digit level as an aromatic compound.

LAW AND ANALYSIS:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and, *mutatis mutandis*, to the GRIs. Additional U.S. Rule of Interpretation 1(a) requires that "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use".

In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUSA. *See*, T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The following subheadings are relevant to the classification of this product:

2922	Oxygen-function amino-compounds:
	Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof:
* * *	* *
2922.49	Other:
	Aromatic:
* * *	* *
	Other:
* * *	* *
	Other:
2922.49.30	Products described in additional U.S. note 3 to section VI. .
* * *	* *
	Other:
	Other:

* * * * *

2922.49.80 Other:

Section VI, Additional U.S. Note 2(a), states “For the purposes of the tariff schedule: (a) The term “aromatic” as applied to any chemical compound refers to such compound containing one or more fused or unfused benzene rings.” Additional U.S. note 3 to Section VI states the following:

3. The term “products described in additional U.S. note 3 to section VI” refers to any product not listed in the Chemical Appendix to the Tariff Schedule and—

(a) For which the importer furnishes the Chemical Abstracts Service (C.A.S.) registry number and certifies that such registry number is not listed in the Chemical Appendix to the Tariff Schedule; or

(b) Which the importer certifies not to have a C.A.S. registry number and not to be listed in the Chemical Appendix to the Tariff Schedule, either under the name used to make Customs entry or under any other name by which it may be known.

There is no dispute at the four or six digit levels. However, it appears that CBP erred when it classified the substance in the “other than aromatic” eight digit subheading.

The CBP laboratory report states unequivocally that the substance is aromatic. The structure of the instant merchandise contains a benzene ring. Therefore, under Section VI, note 2(a), the substance is aromatic and is classified as such.

HOLDING:

4-(Aminomethyl)-benzoic acid, CAS 56–91–7 imported in bulk from China is classified in subheading 2922.49.30, HTSUS, the provision for “Oxygen-function amino-compounds: Amino-acids, other than those containing more than one kind of oxygen function, and their esters; salts thereof: Other: Aromatic: Other Other; Products described in additional U.S. note 3 to section VI. The general column one rate of duty is 6.5% *ad valorem*.”

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

EFFECT ON OTHER RULINGS:

NY H85776, dated February 14, 2002, 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.

**REVOCAION AND MODIFICATION OF RULING LETTERS
AND REVOCAION OF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF CERTAIN METAL BELTS**

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

ACTION: Notice of revocation of twelve ruling letters, modification of three ruling letters and revocation of treatment relating to the tariff classification of certain metal belts.

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 12 ruling letters and modifying 3 ruling letters relating to the tariff classification of certain metal belts under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the proposed actions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 42, No. 11, on March 5, 2008. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 6, 2008.

FOR FURTHER INFORMATION CONTACT: John Rhea, Tariff Classification and Marking Branch, at (202) 572–8785.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 42, No. 11, on March 5, 2008, proposing to revoke 12 ruling letters and to modify 3 ruling letters, all pertaining to the tariff classification of certain metal belts. The notice specifically referred to the revocation of New York Ruling Letters (NY) N004868, dated January 17, 2007, NY M83367, dated May 15, 2006, NY L88846, dated November 18, 2005, NY L80384, dated November 2, 2004, NY K89513, dated September 17, 2004, NY K82771, dated February 6, 2004, NY K86961, dated June 22, 2004, NY K87657, dated June 19, 2004, NY K86932, dated June 29, 2004, NY K86856, dated June 10, 2004, NY J89515, dated October 24, 2003, and NY J80040, dated January 24, 2003 and the modification of NY L84203, dated May 18, 2005, NY K86935, dated June 21, 2004, and NY K87353, dated July 15, 2004. As stated in the proposed notice, the revocations and modifications 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 ones 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 have advised CBP during the notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during 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 this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N004868, NY M83367, NY L88846, NY L80384, NY K89513, NY K82771, NY K86961, NY K87657, NY K86932, NY K86856, NY J89515 and NY J80040, and modifying NY L84203, NY K86935, and NY K87353 and any other ruling not specifically identified, in order to reflect the proper classification of the metal belts according to the analysis contained in Headquarters Ruling Letters (HQ) H011753, H011755, H011756, H011757, H011758, H011760, H011761, H011762, H011764, H011765, H011766, and H011767 set forth in Attachments

A through L of 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 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

DATED: April 22, 2008

Ieva K. O'Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H011753
April 16, 2008
CLA-2 OT:RR:CTF:TCM H011753 JER
CATEGORY: Classification
TARIFF NO.: 7326.90.8587

MR. BRIAN W. ZIHA
CUSTOMS EXPRESS, INC.
4500 Woodson Road
St. Louis, MO 63134

RE: Classification of certain metal chain fashion belts; Revocation of New York Ruling (NY) N004868

DEAR MR. ZIHA:

Pursuant to your binding ruling request sent on behalf of the importer, Stars Design Group (Stars), the Bureau of Customs and Border Protection (CBP), issued New York Ruling Letter, (NY) N004868, dated January 17, 2007, in which Stars' chain belt was classified as an "article of imitation jewelry" under heading 7117 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have since reviewed NY N004868 and find it to be 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 was published on March 5, 2008, in the Customs Bulletin, Volume 42, No. 11. No comments were received in response to this notice.

FACTS:

The subject article is a belt consisting of a 100% iron chain measuring approximately 34" in length with a 100% polyester strip of fabric that is woven through the links of the chain. The ends of the fabric strip extend approximately 17" beyond the ends of the chain and serve as ties for the belt.

ISSUE:

Is the subject belt classifiable as imitation jewelry or as a clothing accessory?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

7117	Imitation jewelry: Of base metal, whether or not plated with precious metal:	* * *
7117.19	Other:	* * *
	Other:	* * *
7117.19.90	Other	* * *
7326	Other articles of iron or steel:	* * *
7326.90	Other:	* * *
	Other:	* * *
7326.90.85	Other	* * *
7326.90.8587	Other	* * *

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. The legal notes to Section XV⁷ provide, in pertinent part:

⁷This section covers Chapters 72 through 83 of the HTSUS.

Section XV: Base metals and articles of base metal

1. This section does not cover:

* * *

(e) Goods of Chapter 71 (for example, precious metal alloys, base metal clad with precious metal, imitation jewelry);

* * *

The legal notes to chapter 71 state, in pertinent part:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

(a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia. . . .

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of Note 9 above. . . .

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The ENs to heading 7117, HTSUS, provide, in pertinent part:

For the purposes of this heading, the expression **imitation jewelry**, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc. . . .

(Emphasis in original)

* * *

Initially, we note that the subject import is a composite good, consisting of both metal and a non-metal component, i.e. the polyester strip of fabric. According to GRI 3(b), composite goods are to be classified “as if they consisted of the material or component which gives them their essential character. . . .” The term “essential character,” refers to “the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article.” Headquarters Ruling Letter (HQ) 956538, dated November 29, 1994; See also *Better Home Plastics Corp. v. United States*, 20 CIT. 221; 916 F. Supp. 1265 (1996). In the instant matter the essential character of the belt is the metal chain. The composite belt will therefore be classified as if it consisted only of iron. At issue is whether the metal belt is identifiable as imitation jewelry or as clothing accessories.

In NY N004868, the subject belt was originally classified under heading 7117, HTSUS, as an “article of imitation jewelry.” Upon review, we find that determination to be in error. The term “imitation jewelry” applies only to

“small objects of personal adornment.” See chapter 71, note 9(a). These objects include, but are not limited to, “rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia.” Belts are not specifically named in this list of exemplars. Classification under heading 7117, HTSUS, is therefore dependent upon the canon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “Where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States* (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157.

Fashion belts do not share the same essential characteristics as the listed exemplars. The named articles are all “small objects of personal adornment” which share the characteristics of being generally lightweight and comparatively small in size. Belts, on the other hand, must be large enough to encircle the wearer’s waist, a circumference which is larger than the finger, neck or wrist. Furthermore, each of the articles listed is primarily decorative. Any functional use is subsidiary to the primary purpose of adornment. While belts may be used for their functional and decorative qualities, neither use is clearly primary⁸. By application of *ejusdem generis*, therefore, the subject belts are excluded from heading 7117, HTSUS.

This conclusion is consistent with CBP practice with respect to plastic and textile belts. CBP has generally excluded such items from heading 7117, HTSUS, stating that they “do not meet the definition of ‘imitation [jewelry]’ pursuant to note 8(a)⁹ nor are they similar to the cited exemplars.” HQ 956014, dated June 8, 1994. See also HQ 083703, dated September 1, 1989, (holding that textile belts with metal fashion buckles did not meet the definition of “imitation jewelry,” and therefore could not be classified under heading 7117, HTSUS). Fashion belts, regardless of the constituent material, are excluded from heading 7117, HTSUS, because they do not satisfy the definition of “imitation jewelry.”

We next consider whether the subject belt is classifiable as a “clothing accessory.” The term “accessory” is not defined in the Harmonized Tariff Schedule or the ENs. When a tariff term is not defined in either the HTSUSA or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary. See *Rohm & Haas Co. v. United States*, 727 F.2d 1095 (CAFC 1984). In HQ 966506, dated August 26, 2003, CBP adopted a definition of the key term “accessory.”

Webster’s Third New International Dictionary, Unabridged (1986), defines accessory as “an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else any of various articles of apparel . . . that accent or otherwise complete one’s costume.” . . . There is no require-

⁸In this ruling, we are not considering belts used for commercial purposes, such as tool belts. See New York Ruling Letter (NY) F87573, dated June 14, 2000.

⁹Chapter 71, note 8(a) of the 1994 HTSUS corresponds to chapter 71, note 9(a) of the 2008 HTSUS.

ment that accessories exhibit a reliance or dependence on the primary article(s). Accessories must be related to, or exhibit some connection to the primary article, and must be intended for use solely or principally as an accessory. **For example belts used as clothing accessories need not rely or depend on a particular article of clothing. Fashionable belt accessories . . . are often used for adornment or to compliment [sic.] clothing.** (Emphasis added)

The subject article satisfies the definition of “accessory.” The metal belt is not essential, but adds to the beauty of the wearer’s clothing. The belt “accent[s] or otherwise complete[s] one’s costume.”

We recognize that there has been some inconsistency in the classification of fashion belts. While textile or plastic belts are generally classified as clothing accessories, metal belts have been classified as both clothing accessories and imitation jewelry. See NY L88204, dated November 17, 2005 (classification of plastic belts under heading 3926, HTSUS, which provides for “. . . articles of apparel and clothing accessories”); NY I81111, dated April 29, 2002 (classification of a woven textile belt under heading 6217, HTSUS, which provides for “other made up clothing accessories”); NY 875846, dated July 22, 1992 (classification of an aluminum chain belt under heading 7616 as “other articles of aluminum”); and NY L88846, dated November 18, 2005 (classification of a metal chain belt under heading 7117, HTSUS, as imitation jewelry). It is CBP’s position that belts are classifiable as clothing accessories regardless of the component materials. We note that the HTSUS does not specifically contain a provision for clothing accessories of metal. Metal clothing accessories are therefore classified according to their constituent material.

HOLDING:

By application of GRI 1 and GRI 3(b), the subject metal chain belt is classifiable under heading 7326, HTSUS. Specifically, it is classifiable under subheading 7326.90.8587, HTSUSA, which provides for: “Other articles of iron or steel: Other: Other: Other: Other . . . Other.” The 2008 general, column one rate of duty is 2.9 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY N004868, dated January 17, 2007, is hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O’Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H011755
April 16, 2008
CLA-2 OT:RR:CTF:TCM H011755 JER
CATEGORY: Classification
TARIFF NO.: N/A

MS. YVONNE WHITLEY
THE MILLWORK TRADING CO. LTD.
1372 Broadway, Second Floor
New York, NY 10018

RE: Classification of certain metal chain fashion belts; Revocation of New York Ruling (NY) M83367

DEAR MS. WHITLEY:

On May 15, 2006, the Bureau of Customs and Border Protection (CBP), issued to you New York Ruling Letter, (NY) M83367, in which a chain belt was classified as an “article of imitation jewelry” under heading 7117 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have since reviewed NY M83367 and find it to be 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 was published on March 5, 2008, in the Customs Bulletin, Volume 42, No. 11. No comments were received in response to this notice.

FACTS:

The subject article, style number 82148, is a women’s acrylic rhinestone and metal chain belt. The belt is made of metal with acrylic rhinestones completely covering the entire belt.

ISSUE:

Is the subject belt classifiable as imitation jewelry or as a clothing accessory?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. The legal notes to Section XV¹⁰ provide, in pertinent part:

Section XV: Base metals and articles of base metal

¹⁰This section covers Chapters 72 through 83 of the HTSUS.

1. This section does not cover:

* * *

(e) Goods of Chapter 71 (for example, precious metal alloys, base metal clad with precious metal, imitation jewelry);

* * *

The legal notes to chapter 71 state, in pertinent part:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

(a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia. . . .

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of Note 9 above. . . .

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The ENs to heading 7117, HTSUS, provide, in pertinent part:

For the purposes of this heading, the expression **imitation jewellery**, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc. . . .

(Emphasis in original)

* * *

Initially, we note that the subject import is a composite good, consisting of both a metal and a non-metal component. According to GRI 3(b), composite goods are to be classified “as if they consisted of the material or component which gives them their essential character. . . .” The term ‘essential character,’ refers to “the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article.” Headquarters Ruling Letter (HQ) 956538, dated November 29, 1994; See also *Better Home Plastics Corp. v. United States*, 20 CIT. 221; 916 F. Supp. 1265 (1996). In the instant matter the essential character of the belt is the metal chain. The composite belt will therefore be classified as if it consisted only of the metal. At issue is whether the metal belt is identifiable as imitation jewelry or as a clothing accessory.

In NY M83367, the subject belt was originally classified under heading 7117, HTSUS, as an “article of imitation jewelry.” Upon review, we find that determination to be in error. The term “imitation jewelry” applies only to “small objects of personal adornment.” See chapter 71, note 9(a). These objects include, but are not limited to, “rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia.” Belts are not specifically named in this

list of exemplars. Classification under heading 7117, HTSUS, is therefore dependent upon the canon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “Where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States* (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157.

Fashion belts do not share the same essential characteristics as the listed exemplars. The named articles are all “small objects of personal adornment” which share the characteristics of being generally lightweight and comparatively small in size. Belts, on the other hand, must be large enough to encircle the wearer’s waist, a circumference which is larger than the finger, neck or wrist. Furthermore, each of the articles listed is primarily decorative. Any functional use is subsidiary to the primary purpose of adornment. While belts may be used for their functional and decorative qualities, neither use is clearly primary¹¹. By application of *ejusdem generis*, therefore, the subject belts are excluded from heading 7117, HTSUS.

This conclusion is consistent with CBP practice with respect to plastic and textile belts. CBP has generally excluded such items from heading 7117, HTSUS, stating that they “do not meet the definition of ‘imitation [jewelry]’ pursuant to note 8(a)¹² nor are they similar to the cited exemplars.” HQ 956014, dated June 8, 1994. See also HQ 083703, dated September 1, 1989, (holding that textile belts with metal fashion buckles did not meet the definition of “imitation jewelry,” and therefore could not be classified under heading 7117, HTSUS). Fashion belts, regardless of the constituent material, are excluded from heading 7117, HTSUS, because they do not satisfy the definition of “imitation jewelry.”

We next consider whether the subject belt is classifiable as a “clothing accessory.” The term “accessory” is not defined in the Harmonized Tariff Schedule or the ENs. When a tariff term is not defined in either the HTSUSA or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary. See *Rohm & Haas Co. v. United States*, 727 F.2d 1095 (CAFC 1984). In HQ 966506, dated August 26, 2003, CBP adopted a definition of the key term “accessory.”

Webster’s Third New International Dictionary, Unabridged (1986), defines accessory as **“an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else . . . any of various articles of apparel . . . that accent or otherwise complete one’s costume.”** . . . There is no requirement that accessories exhibit a reliance or dependence on the primary article(s). Accessories must be related to, or exhibit some connection to the primary article, and must be intended for use solely or principally as an accessory. **For example belts used as clothing accessories**

¹¹ In this ruling, we are not considering belts used for commercial purposes, such as tool belts. See New York Ruling Letter (NY) F87573, dated June 14, 2000.

¹² Chapter 71, note 8(a) of the 1994 HTSUS corresponds to chapter 71, note 9(a) of the 2008 HTSUS.

need not rely or depend on a particular article of clothing. Fashionable belt accessories . . . are often used for adornment or to compliment [sic.] clothing. (Emphasis added)

The subject article satisfies the definition of “accessory.” The metal belt is not essential, but adds to the beauty of the wearer’s clothing. The belt “accent[s] or otherwise complete[s] one’s costume.”

We recognize that there has been some inconsistency in the classification of fashion belts. While textile or plastic belts are generally classified as clothing accessories, metal belts have been classified as both clothing accessories and imitation jewelry. See NY L88204, dated November 17, 2005 (classification of plastic belts under heading 3926, HTSUS, which provides for “. . . articles of apparel and clothing accessories”); NY I81111, dated April 29, 2002 (classification of a woven textile belt under heading 6217, HTSUS, which provides for “other made up clothing accessories”); NY 875846, dated July 22, 1992 (classification of an aluminum chain belt under heading 7616 as “other articles of aluminum”); and NY L88846, dated November 18, 2005 (classification of a metal chain belt under heading 7117, HTSUS, as imitation jewelry). It is CBP’s position that belts are classifiable as clothing accessories regardless of the component materials. We note that the HTSUS does not specifically contain a provision for clothing accessories of metal. Metal clothing accessories are therefore classified according to their constituent material.

HOLDING:

By application of GRI 1 and GRI 3(b), the subject metal chain belt is classifiable according to its constituent material. Unfortunately, ruling letter NY M83367 does not specify the constituent material of the subject belt. On publication of the final revocation of this ruling letter, if you still wish you may submit your request to CBP, National Commodity Specialist Division, One Penn Plaza, 10th Floor, New York, NY 10119.

EFFECT ON OTHER RULINGS:

NY M83367, dated May 15, 2006, is hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O’Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT C]

HQ H011756
 April 16, 2008
CLA-2 OT:RR:CTF:TCM H011756 JER
CATEGORY: Classification
TARIFF NO.: N/A

MR. WILSON LING
 MARCO POLO EXPRESS INT'L. INC.
 2411 Santa Fe Ave., Suite B
 Redondo Beach, CA 90278

RE: Classification of certain metal chain fashion belts; Revocation of New York Ruling (NY) L88846

DEAR MR. LING:

Pursuant to your binding ruling request sent on behalf of the importer, Leegin Creative Leather Products, Inc. (Leegin), the Bureau of Customs and Border Protection (CBP) issued to you New York Ruling Letter, (NY) L88846, dated November 18, 2005, in which a chain belt was classified as an "article of imitation jewelry" under heading 7117 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have since reviewed NY L88846 and find it to be 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 was published on March 5, 2008, in the Customs Bulletin, Volume 42, No. 11. No comments were received in response to this notice.

FACTS:

The subject article is a chain belt, Style #B50180. It consists of a metal chain, plastic imitation pearls and a cowhide leather flower.

ISSUE:

Is the subject belt classifiable as imitation jewelry or as a clothing accessory?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. The legal notes to Section XV¹³ provide, in pertinent part:

Section XV: Base metals and articles of base metal

1. This section does not cover:

* * *

¹³This section covers Chapters 72 through 83 of the HTSUS.

(e) Goods of Chapter 71 (for example, precious metal alloys, base metal clad with precious metal, imitation jewelry);

* * *

The legal notes to chapter 71 state, in pertinent part:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

(a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia. . . .

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of Note 9 above. . . .

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The ENs to heading 7117, HTSUS, provide, in pertinent part:

For the purposes of this heading, the expression **imitation jewelry**, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc. . . .

(Emphasis in original)

* * *

Initially, we note that the subject import is a composite good, consisting of both metal and a non-metal component, i.e. plastic imitation pearls and cowhide leather. According to GRI 3(b), composite goods are to be classified “as if they consisted of the material or component which gives them their essential character. . . .” The term “essential character,” refers to “the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article.” Headquarters Ruling Letter (HQ) 956538, dated November 29, 1994; See also *Better Home Plastics Corp. v. United States*, 20 CIT. 221; 916 F. Supp. 1265 (1996). In the instant matter the essential character of the belt is the metal chain. The composite belt will therefore be classified as if it consisted only of metal. At issue is whether the metal belt is identifiable as imitation jewelry or as clothing accessories.

In NY L88846, the subject belt was originally classified under heading 7117, HTSUS, as an “article of imitation jewelry.” Upon review, we find that determination to be in error. The term “imitation jewelry” applies only to “small objects of personal adornment.” See chapter 71, note 9(a). These objects include, but are not limited to, “rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia.” Belts are not specifically named in this list of exemplars. Classification under heading 7117, HTSUS, is therefore

dependent upon the canon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “Where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States* (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157.

Fashion belts do not share the same essential characteristics as the listed exemplars. The named articles are all “small objects of personal adornment” which share the characteristics of being generally lightweight and comparatively small in size. Belts, on the other hand, must be large enough to encircle the wearer’s waist, a circumference which is larger than the finger, neck or wrist. Furthermore, each of the articles listed is primarily decorative. Any functional use is subsidiary to the primary purpose of adornment. While belts may be used for their functional and decorative qualities, neither use is clearly primary¹⁴. By application of *ejusdem generis*, therefore, the subject belts are excluded from heading 7117, HTSUS.

This conclusion is consistent with CBP practice with respect to plastic and textile belts. CBP has generally excluded such items from heading 7117, HTSUS, stating that they “do not meet the definition of ‘imitation [jewelry]’ pursuant to note 8(a)¹⁵ nor are they similar to the cited exemplars.” HQ 956014, dated June 8, 1994. See also HQ 083703, dated September 1, 1989, (holding that textile belts with metal fashion buckles did not meet the definition of “imitation jewelry,” and therefore could not be classified under heading 7117, HTSUS). Fashion belts, regardless of the constituent material, are excluded from heading 7117, HTSUS, because they do not satisfy the definition of “imitation jewelry.”

We next consider whether the subject belt is classifiable as a “clothing accessory.” The term “accessory” is not defined in the Harmonized Tariff Schedule or the ENs. When a tariff term is not defined in either the HTSUSA or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary. See *Rohm & Haas Co. v. United States*, 727 F.2d 1095 (CAFC 1984). In HQ 966506, dated August 26, 2003, CBP adopted a definition of the key term “accessory:”

Webster’s Third New International Dictionary, Unabridged (1986), defines accessory as **“an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else . . . any of various articles of apparel . . . that accent or otherwise complete one’s costume.”** . . . There is no requirement that accessories exhibit a reliance or dependence on the primary article(s). Accessories must be related to, or exhibit some connection to the primary article, and must be intended for use solely or principally as an accessory. **For example belts used as clothing accessories need not rely or depend on a particular article of clothing. Fashion**

¹⁴In this ruling, we are not considering belts used for commercial purposes, such as tool belts. See New York Ruling Letter (NY) F87573, dated June 14, 2000.

¹⁵Chapter 71, note 8(a) of the 1994 HTSUS corresponds to chapter 71, note 9(a) of the 2008 HTSUS.

ionable belt accessories . . . are often used for adornment or to compliment [sic.] clothing. (Emphasis added)

The subject article satisfies the definition of “accessory.” The metal belt is not essential, but adds to the beauty of the wearer’s clothing. The belt “accent[s] or otherwise complete[s] one’s costume.”

We recognize that there has been some inconsistency in the classification of fashion belts. While textile or plastic belts are generally classified as clothing accessories, metal belts have been classified as both clothing accessories and imitation jewelry. See NY L88204, dated November 17, 2005 (classification of plastic belts under heading 3926, HTSUS, which provides for “. . . articles of apparel and clothing accessories”); NY I81111, dated April 29, 2002 (classification of a woven textile belt under heading 6217, HTSUS, which provides for “other made up clothing accessories”); NY 875846, dated July 22, 1992 (classification of an aluminum chain belt under heading 7616 as “other articles of aluminum”); and NY L88846, dated November 18, 2005 (classification of a metal chain belt under heading 7117, HTSUS, as imitation jewelry). It is CBP’s position that belts are classifiable as clothing accessories regardless of the component materials. We note that the HTSUS does not specifically contain a provision for clothing accessories of metal. Metal clothing accessories are therefore classified according to their constituent material.

HOLDING:

By application of GRI 1 and GRI 3(b), the subject metal chain belt is classifiable according to its constituent material. Unfortunately, ruling letter NY L88846 does not specify the constituent material of the subject belt. On publication of the final revocation of this ruling letter, if you still wish you may submit your request to CBP, National Commodity Specialist Division, One Penn Plaza, 10th Floor, New York, NY 10119.

EFFECT ON OTHER RULINGS:

NY L88846, dated November 18, 2005, is hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O’Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT D]

HQ H011757
April 16, 2008
CLA-2 OT:RR:CTF:TCM H011757 JER
CATEGORY: Classification
TARIFF NO.: N/A

MS. MARTHA DECASTLE
COMPLIANCE COORDINATOR
MCNAUGHTON APPAREL GROUP INC.
45 Fernwood Avenue
Edison, NJ 08837

RE: Classification of certain metal chain fashion belt; Modification of New York Ruling (NY) L84203

DEAR MS. DECASTLE:

On May 18, 2005, the Bureau of Customs and Border Protection (CBP) issued to you New York Ruling Letter, (NY) L84203, in which a chain belt was identified as an “article of imitation jewelry” under heading 7117 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have since reviewed NY L84203 and find some of the reasoning contained within it to be 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 modification was published on March 5, 2008, in the Customs Bulletin, Volume 42, No. 11. No comments were received in response to this notice.

FACTS:

In NY L84203, CBP classified a woman’s cotton skirt which was imported with a metal chain belt inserted through the belt loops. This belt, composed of a woven textile fabric and metal chain, was inserted through the belt loops and was described as a metal jewelry belt, classifiable in heading 7117. The items were considered a set for classification purposes and classified under heading 6204, HTSUS, based on the classification of the skirt. At issue in the present matter is the individual classification of the metal chain belt.

ISSUE:

Is the subject belt classifiable as imitation jewelry or as a clothing accessory?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. The legal

notes to Section XV¹⁶ provide, in pertinent part:

Section XV: Base metals and articles of base metal

1. This section does not cover:

* * *

(e) Goods of Chapter 71 (for example, precious metal alloys, base metal clad with precious metal, imitation jewelry);

* * *

The legal notes to chapter 71 state, in pertinent part:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

(a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia. . . .

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of Note 9 above. . . .

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The ENs to heading 7117, HTSUS, provide, in pertinent part:

For the purposes of this heading, the expression **imitation jewellery**, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc. . . .

(Emphasis in original)

* * *

Initially, we note that the subject modification only concerns classification of the metal belt in NY L84203. While the classification of the garment with the belt was correct, we now find that the classification of the individual belt was in error.

The subject belt is a composite good, consisting of both metal and a non-metal component, i.e. woven textile fabric. According to GRI 3(b), composite goods are to be classified “as if they consisted of the material or component which gives them their essential character. . . .” The term “essential character,” refers to “the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article.” Headquarters Ruling Letter (HQ) 956538, dated November 29, 1994; See also *Better Home Plastics Corp. v. United States*, 20 CIT. 221; 916 F. Supp. 1265 (1996). In the instant matter the essential char-

¹⁶This section covers Chapters 72 through 83 of the HTSUS.

acter of the belt is the metal chain. The composite belt will therefore be classified as if it consisted only of metal. At issue is whether the metal belt is identifiable as imitation jewelry or as clothing accessories.

The subject belt was originally classified under heading 7117, HTSUS, as an “article of imitation jewelry.” Upon review, we find that determination to be in error. The term “imitation jewelry” applies only to “small objects of personal adornment.” See chapter 71, note 9(a). These objects include, but are not limited to, “rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia.” Belts are not specifically named in this list of exemplars. Classification under heading 7117, HTSUS, is therefore dependent upon the canon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “Where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States* (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157.

Fashion belts do not share the same essential characteristics as the listed exemplars. The named articles are all “small objects of personal adornment” which share the characteristics of being generally lightweight and comparatively small in size. Belts, on the other hand, must be large enough to encircle the wearer’s waist, a circumference which is larger than the finger, neck or wrist. Furthermore, each of the articles listed is primarily decorative. Any functional use is subsidiary to the primary purpose of adornment. While belts may be used for their functional and decorative qualities, neither use is clearly primary¹⁷. By application of *ejusdem generis*, therefore, the subject belts are excluded from heading 7117, HTSUS.

This conclusion is consistent with CBP practice with respect to plastic and textile belts. CBP has generally excluded such items from heading 7117, HTSUS, stating that they “do not meet the definition of ‘imitation [jewelry]’ pursuant to note 8(a)¹⁸ nor are they similar to the cited exemplars.” HQ 956014, dated June 8, 1994. See also HQ 083703, dated September 1, 1989, (holding that textile belts with metal fashion buckles did not meet the definition of “imitation jewelry,” and therefore could not be classified under heading 7117, HTSUS). Fashion belts, regardless of the constituent material, are excluded from heading 7117, HTSUS, because they do not satisfy the definition of “imitation jewelry.”

We next consider whether the subject belt is classifiable as a “clothing accessory.” The term “accessory” is not defined in the Harmonized Tariff Schedule or the ENs. When a tariff term is not defined in either the HTSUSA or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary. See *Rohm & Haas Co. v. United States*, 727 F.2d 1095 (CAFC 1984). In HQ 966506, dated August 26, 2003, CBP adopted a definition of the key term “accessory.”

¹⁷In this ruling, we are not considering belts used for commercial purposes, such as tool belts. See New York Ruling Letter (NY) F87573, dated June 14, 2000.

¹⁸Chapter 71, note 8(a) of the 1994 HTSUS corresponds to chapter 71, note 9(a) of the 2008 HTSUS.

Webster's Third New International Dictionary, Unabridged (1986), defines accessory as **“an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else . . . any of various articles of apparel . . . that accent or otherwise complete one's costume.”** . . . There is no requirement that accessories exhibit a reliance or dependence on the primary article(s). Accessories must be related to, or exhibit some connection to the primary article, and must be intended for use solely or principally as an accessory. **For example belts used as clothing accessories need not rely or depend on a particular article of clothing. Fashionable belt accessories . . . are often used for adornment or to compliment [sic.] clothing.** (Emphasis added)

The subject article satisfies the definition of “accessory.” The metal belt is not essential, but adds to the beauty of the wearer's clothing. The belt “accent[s] or otherwise complete[s] one's costume.”

We recognize that there has been some inconsistency in the classification of fashion belts. While textile or plastic belts are generally classified as clothing accessories, metal belts have been classified as both clothing accessories and imitation jewelry. See NY L88204, dated November 17, 2005 (classification of plastic belts under heading 3926, HTSUS, which provides for “. . . articles of apparel and clothing accessories”); NY I81111, dated April 29, 2002 (classification of a woven textile belt under heading 6217, HTSUS, which provides for “other made up clothing accessories”); NY 875846, dated July 22, 1992 (classification of an aluminum chain belt under heading 7616 as “other articles of aluminum”); and NY L88846, dated November 18, 2005 (classification of a metal chain belt under heading 7117, HTSUS, as imitation jewelry). It is CBP's position that belts are classifiable as clothing accessories regardless of the component materials. We note that the HTSUS does not specifically contain a provision for clothing accessories of metal. Metal clothing accessories are therefore classified according to their constituent material.

HOLDING:

By application of GRI 1 and GRI 3(b), the subject metal chain belt is classifiable according to its constituent material. Unfortunately, ruling letter NY L88846 does not specify the constituent material of the subject belt. On publication of the final revocation of this ruling letter, if you still wish you may submit your request to CBP, National Commodity Specialist Division, One Penn Plaza, 10th Floor, New York, NY 10119.

Classification of the women's skirt and belt as a set under heading 6204, HTSUS, remains unchanged.

EFFECT ON OTHER RULINGS:

NY L84203, dated May 18, 2005, is hereby modified. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O'Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT E]

HQ H011758

April 16, 2008

CLA-2 OT:RR:CTF:TCM H011758 JER**CATEGORY:** Classification**TARIFF NO.:** N/A

MS. MELISSA FOX
BARTHCO INTERNATIONAL, INC.
721 Chestnut Street
Philadelphia, PA 19106

RE: Classification of certain metal chain fashion belts; Modification of New York Ruling (NY) K87353

DEAR MS. FOX:

Pursuant to your binding ruling request of June 24, 2004, sent on behalf of the importer, Jones Apparel Group (Jones), the Bureau of Customs and Border Protection (CBP), issued to you New York Ruling Letter, (NY) K87353, dated July 15, 2004. In that ruling, Jones' chain belt was classified with the pants as a set. It was noted that the belt was individually identifiable as an "article of imitation jewelry" under heading 7117 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have since reviewed NY K87353 and find some of the reasoning contained within it to be 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 modification was published on March 5, 2008, in the Customs Bulletin, Volume 42, No. 11. No comments were received in response to this notice.

FACTS:

In NY K87353, CBP classified a pair of women's pants which were imported with a metal chain belt inserted through the belt loops. This belt, composed of a satin ribbon and metal chain, was inserted through the belt loops of the pants. The belt was identified as a metal jewelry belt, classifiable in heading 7117. The items were considered a set for classification purposes and classified under heading 6204, HTSUS, based on the classification of the pants. At issue in the present matter is the individual classification of the metal chain belt.

ISSUE:

Is the subject belt classifiable as imitation jewelry or as a clothing accessory?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. The legal

notes to Section XV¹⁹ provide, in pertinent part:

Section XV: Base metals and articles of base metal

1. This section does not cover:

* * *

(e) Goods of Chapter 71 (for example, precious metal alloys, base metal clad with precious metal, imitation jewelry);

* * *

The legal notes to chapter 71 state, in pertinent part:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

(a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia. . . .

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of Note 9 above. . . .

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The ENs to heading 7117, HTSUS, provide, in pertinent part:

For the purposes of this heading, the expression **imitation jewellery**, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc. . . .

(Emphasis in original)

* * *

Initially, we note that the subject modification only concerns the classification of the metal belt in NY K87353. While the classification of the garment with the belt was correct, we now find that the classification of the individual belt was in error.

The subject belt is a composite good, consisting of both metal and a non-metal component, i.e. the satin ribbon. According to GRI 3(b), composite goods are to be classified “as if they consisted of the material or component which gives them their essential character. . . .” The term “essential character,” refers to “the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article.” Headquarters Ruling Letter (HQ) 956538, dated November 29, 1994; See also *Better Home Plastics Corp. v. United States*, 20 CIT. 221; 916 F. Supp. 1265 (1996). In the instant matter the essential char-

¹⁹This section covers Chapters 72 through 83 of the HTSUS.

acter of the belt is the metal chain. The composite belt will therefore be classified as if it consisted only of metal. At issue is whether the metal belt is identifiable as imitation jewelry or as clothing accessories.

The subject belt was originally classified under heading 7117, HTSUS, as an “article of imitation jewelry.” Upon review, we find that determination to be in error. The term “imitation jewelry” applies only to “small objects of personal adornment.” See chapter 71, note 9(a). These objects include, but are not limited to, “rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia.” Belts are not specifically named in this list of exemplars. Classification under heading 7117, HTSUS, is therefore dependent upon the canon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “Where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States* (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157.

Fashion belts do not share the same essential characteristics as the listed exemplars. The named articles are all “small objects of personal adornment” which share the characteristics of being generally lightweight and comparatively small in size. Belts, on the other hand, must be large enough to encircle the wearer’s waist, a circumference which is larger than the finger, neck or wrist. Furthermore, each of the articles listed is primarily decorative. Any functional use is subsidiary to the primary purpose of adornment. While belts may be used for their functional and decorative qualities, neither use is clearly primary²⁰. By application of *ejusdem generis*, therefore, the subject belts are excluded from heading 7117, HTSUS.

This conclusion is consistent with CBP practice with respect to plastic and textile belts. CBP has generally excluded such items from heading 7117, HTSUS, stating that they “do not meet the definition of ‘imitation [jewelry]’ pursuant to note 8(a)²¹ nor are they similar to the cited exemplars.” HQ 956014, dated June 8, 1994. See also HQ 083703, dated September 1, 1989, (holding that textile belts with metal fashion buckles did not meet the definition of “imitation jewelry,” and therefore could not be classified under heading 7117, HTSUS). Fashion belts, regardless of the constituent material, are excluded from heading 7117, HTSUS, because they do not satisfy the definition of “imitation jewelry.”

We next consider whether the subject belt is classifiable as a “clothing accessory.” The term “accessory” is not defined in the Harmonized Tariff Schedule or the ENs. When a tariff term is not defined in either the HTSUSA or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary. See *Rohm & Haas Co. v. United States*, 727 F.2d 1095 (CAFC 1984). In HQ 966506, dated August 26, 2003, CBP adopted a definition of the key term “accessory.”

²⁰In this ruling, we are not considering belts used for commercial purposes, such as tool belts. See New York Ruling Letter (NY) F87573, dated June 14, 2000.

²¹Chapter 71, note 8(a) of the 1994 HTSUS corresponds to chapter 71, note 9(a) of the 2008 HTSUS.

Webster's Third New International Dictionary, Unabridged (1986), defines accessory as **"an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else . . . any of various articles of apparel . . . that accent or otherwise complete one's costume."** . . . There is no requirement that accessories exhibit a reliance or dependence on the primary article(s). Accessories must be related to, or exhibit some connection to the primary article, and must be intended for use solely or principally as an accessory. **For example belts used as clothing accessories need not rely or depend on a particular article of clothing. Fashionable belt accessories . . . are often used for adornment or to compliment [sic.] clothing.** (Emphasis added)

The subject article satisfies the definition of "accessory." The metal belt is not essential, but adds to the beauty of the wearer's clothing. The belt "accent[s] or otherwise complete[s] one's costume."

We recognize that there has been some inconsistency in the classification of fashion belts. While textile or plastic belts are generally classified as clothing accessories, metal belts have been classified as both clothing accessories and imitation jewelry. See NY L88204, dated November 17, 2005 (classification of plastic belts under heading 3926, HTSUS, which provides for ". . . articles of apparel and clothing accessories"); NY I81111, dated April 29, 2002 (classification of a woven textile belt under heading 6217, HTSUS, which provides for "other made up clothing accessories"); NY 875846, dated July 22, 1992 (classification of an aluminum chain belt under heading 7616 as "other articles of aluminum"); and NY L88846, dated November 18, 2005 (classification of a metal chain belt under heading 7117, HTSUS, as imitation jewelry). It is CBP's position that belts are classifiable as clothing accessories regardless of the component materials. We note that the HTSUS does not specifically contain a provision for clothing accessories of base metal. Metal clothing accessories are therefore classified according to their constituent material.

HOLDING:

By application of GRI 1 and GRI 3(b), the subject metal chain belt is classifiable according to its constituent material. Unfortunately, ruling letter NY K87353 does not specify the constituent material of the subject belt. On publication of the final revocation of this ruling letter, if you still wish you may submit your request to CBP, National Commodity Specialist Division, One Penn Plaza, 10th Floor, New York, NY 10119.

Classification of the women's pants and belt as a set under heading 6204, HTSUS, remains unchanged.

EFFECT ON OTHER RULINGS:

NY K87353, dated July 15, 2004, is hereby modified. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O'Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H011760
April 16, 2008
CLA-2 OT:RR:CTF:TCM H011760 JER
CATEGORY: Classification
TARIFF NO.: N/A

MR. BRADLEY MENARD
FOSSIL PARTNERS
2280 N. Greenville Ave.
Richardson, TX 75082

RE: Classification of certain metal chain fashion belts; Revocation of New York Ruling (NY) L80384

DEAR MR. MENARD:

On November 2, 2004, the Bureau of Customs and Border Protection (CBP) issued to you New York Ruling Letter, (NY) L80384, in which a chain belt was classified as an “article of imitation jewelry” under heading 7117 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have since reviewed NY L80384 and find it to be 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 was published on March 5, 2008, in the Customs Bulletin, Volume 42, No. 11. No comments were received in response to this notice.

FACTS:

The subject article, style #SWB5014040, is composed of a double satin 100% polyester and/or nylon ribbon and a metal chain measuring 30 inches in length. The ribbon is woven throughout the chain portion, and two ribbon sections hang from either end for tying.

ISSUE:

Is the subject belt classifiable as imitation jewelry or as a clothing accessory?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. The legal notes to Section XV²² provide, in pertinent part:

Section XV: Base metals and articles of base metal

²²This section covers Chapters 72 through 83 of the HTSUS.

1. This section does not cover:

* * *

(e) Goods of Chapter 71 (for example, precious metal alloys, base metal clad with precious metal, imitation jewelry);

* * *

The legal notes to chapter 71 state, in pertinent part:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

(a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia. . . .

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of Note 9 above. . . .

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The ENs to heading 7117, HTSUS, provide, in pertinent part:

For the purposes of this heading, the expression **imitation jewellery**, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc. . . .

(Emphasis in original)

* * *

Initially, we note that the subject import is a composite good, consisting of both metal and a non-metal component, i.e. the polyester ribbon. According to GRI 3(b), composite goods are to be classified “as if they consisted of the material or component which gives them their essential character. . . .” The term “essential character,” refers to “the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article.” Headquarters Ruling Letter (HQ) 956538, dated November 29, 1994; See also *Better Home Plastics Corp. v. United States*, 20 CIT. 221; 916 F. Supp. 1265 (1996). In the instant matter the essential character of the belt is the metal chain. The composite belt will therefore be classified as if it consisted only of metal. At issue is whether the metal belt is identifiable as imitation jewelry or as a clothing accessory.

In NY L80384, the subject belt was originally classified under heading 7117, HTSUS, as an “article of imitation jewelry.” Upon review, we find that determination to be in error. The term “imitation jewelry” applies only to “small objects of personal adornment.” See chapter 71, note 9(a). These objects include, but are not limited to, “rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia.” Belts are not specifically named in this

list of exemplars. Classification under heading 7117, HTSUS, is therefore dependent upon the canon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “Where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States* (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157.

Fashion belts do not share the same essential characteristics as the listed exemplars. The named articles are all “small objects of personal adornment” which share the characteristics of being generally lightweight and comparatively small in size. Belts, on the other hand, must be large enough to encircle the wearer’s waist, a circumference which is larger than the finger, neck or wrist. Furthermore, each of the articles listed is primarily decorative. Any functional use is subsidiary to the primary purpose of adornment. While belts may be used for their functional and decorative qualities, neither use is clearly primary²³. By application of *ejusdem generis*, therefore, the subject belts are excluded from heading 7117, HTSUS.

This conclusion is consistent with CBP practice with respect to plastic and textile belts. CBP has generally excluded such items from heading 7117, HTSUS, stating that they “do not meet the definition of ‘imitation [jewelry]’ pursuant to note 8(a)²⁴ nor are they similar to the cited exemplars.” HQ 956014, dated June 8, 1994. See also HQ 083703, dated September 1, 1989, (holding that textile belts with metal fashion buckles did not meet the definition of “imitation jewelry,” and therefore could not be classified under heading 7117, HTSUS). Fashion belts, regardless of the constituent material, are excluded from heading 7117, HTSUS, because they do not satisfy the definition of “imitation jewelry.”

We next consider whether the subject belt is classifiable as a “clothing accessory.” The term “accessory” is not defined in the Harmonized Tariff Schedule or the ENs. When a tariff term is not defined in either the HTSUSA or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary. See *Rohm & Haas Co. v. United States*, 727 F.2d 1095 (CAFC 1984). In HQ 966506, dated August 26, 2003, CBP adopted a definition of the key term “accessory.”

Webster’s Third New International Dictionary, Unabridged (1986), defines accessory as **“an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else . . . any of various articles of apparel . . . that accent or otherwise complete one’s costume.”** . . . There is no requirement that accessories exhibit a reliance or dependence on the primary article(s). Accessories must be related to, or exhibit some connection to the primary article, and must be intended for use solely or principally as an accessory. **For example belts used as clothing accessories**

²³In this ruling, we are not considering belts used for commercial purposes, such as tool belts. See New York Ruling Letter (NY) F87573, dated June 14, 2000.

²⁴Chapter 71, note 8(a) of the 1994 HTSUS corresponds to chapter 71, note 9(a) of the 2008 HTSUS.

need not rely or depend on a particular article of clothing. Fashionable belt accessories . . . are often used for adornment or to compliment [sic.] clothing. (Emphasis added)

The subject article satisfies the definition of “accessory.” The metal belt is not essential, but adds to the beauty of the wearer’s clothing. The belt “accent[s] or otherwise complete[s] one’s costume.”

We recognize that there has been some inconsistency in the classification of fashion belts. While textile or plastic belts are generally classified as clothing accessories, metal belts have been classified as both clothing accessories and imitation jewelry. See NY L88204, dated November 17, 2005 (classification of plastic belts under heading 3926, HTSUS, which provides for “. . . articles of apparel and clothing accessories”); NY I81111, dated April 29, 2002 (classification of a woven textile belt under heading 6217, HTSUS, which provides for “other made up clothing accessories”); NY 875846, dated July 22, 1992 (classification of an aluminum chain belt under heading 7616 as “other articles of aluminum”); and NY L88846, dated November 18, 2005 (classification of a metal chain belt under heading 7117, HTSUS, as imitation jewelry). It is CBP’s position that belts are classifiable as clothing accessories regardless of the component materials. We note that the HTSUS does not specifically contain a provision for clothing accessories of metal. Metal clothing accessories are therefore classified according to their constituent material.

HOLDING:

By application of GRI 1 and GRI 3(b), the subject metal chain belt is classifiable according to its constituent material. Unfortunately, ruling letter NY L80384 does not specify the constituent material of the subject belt. On publication of the final revocation of this ruling letter, if you still wish you may submit your request to CBP, National Commodity Specialist Division, One Penn Plaza, 10th Floor, New York, NY 10119.

EFFECT ON OTHER RULINGS:

NY L80384, dated November 2, 2004, is hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O’Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT G]

HQ H011761
 April 16, 2008
CLA-2 OT:RR:CTF:TCM H011761 JER
CATEGORY: Classification
TARIFF NO.: N/A

MS. JULIE VAN DOORN
 LANDES
 400 St-Valier Street
 Granby, Quebec J2G 7Y4

RE: Classification of certain metal chain fashion belts; Revocation of New York Ruling (NY) K89513

DEAR MS. VAN DOORN:

On September 17, 2004, the Bureau of Customs and Border Protection (CBP) issued to you New York Ruling Letter, (NY) K89513, in which a chain belt was classified as an “article of imitation jewelry” under heading 7117 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have since reviewed NY K89513 and find it to be 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 was published on March 5, 2008, in the Customs Bulletin, Volume 42, No. 11. No comments were received in response to this notice.

FACTS:

The subject article is a ladies’ belt made of a polyester ribbon and a metal chain. The ribbon is woven through the chain links, and two ribbon sections hang from either end for tying.

ISSUE:

Is the subject belt classifiable as imitation jewelry or as a clothing accessory?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. The HTSUS provisions under consideration are as follows:

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. The legal notes to Section XV²⁵ provide, in pertinent part:

Section XV: Base metals and articles of base metal

1. This section does not cover:

* * *

²⁵This section covers Chapters 72 through 83 of the HTSUS.

(e) Goods of Chapter 71 (for example, precious metal alloys, base metal clad with precious metal, imitation jewelry);

* * *

The legal notes to chapter 71 state, in pertinent part:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

(a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia. . . .

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of Note 9 above. . . .

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The ENs to heading 7117, HTSUS, provide, in pertinent part:

For the purposes of this heading, the expression **imitation jewelry**, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc. . . .

(Emphasis in original)

* * *

Initially, we note that the subject import is a composite good, consisting of both metal and a non-metal component, i.e. the polyester ribbon. According to GRI 3(b), composite goods are to be classified “as if they consisted of the material or component which gives them their essential character. . . .” The term “essential character,” refers to “the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article.” Headquarters Ruling Letter (HQ) 956538, dated November 29, 1994; See also *Better Home Plastics Corp. v. United States*, 20 CIT. 221; 916 F. Supp. 1265 (1996). In the instant matter the essential character of the belt is the metal chain. The composite belt will therefore be classified as if it consisted only of metal. At issue is whether the metal belt is identifiable as imitation jewelry or as a clothing accessory.

In NY K89513, the subject belt was originally classified under heading 7117, HTSUS, as an “article of imitation jewelry.” Upon review, we find that determination to be in error. The term “imitation jewelry” applies only to “small objects of personal adornment.” See chapter 71, note 9(a). These objects include, but are not limited to, “rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia.” Belts are not specifically named in this list of exemplars. Classification under heading 7117, HTSUS, is therefore dependent upon the canon of construction known as *ejusdem generis*, which

means literally, “of the same class or kind.” “Where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” Nissho-Iwai American Corp. v. United States (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” Id. at 157.

Fashion belts do not share the same essential characteristics as the listed exemplars. The named articles are all “small objects of personal adornment” which share the characteristics of being generally lightweight and comparatively small in size. Belts, on the other hand, must be large enough to encircle the wearer’s waist, a circumference which is larger than the finger, neck or wrist. Furthermore, each of the articles listed is primarily decorative. Any functional use is subsidiary to the primary purpose of adornment. While belts may be used for their functional and decorative qualities, neither use is clearly primary²⁶. By application of *ejusdem generis*, therefore, the subject belts are excluded from heading 7117, HTSUS.

This conclusion is consistent with CBP practice with respect to plastic and textile belts. CBP has generally excluded such items from heading 7117, HTSUS, stating that they “do not meet the definition of ‘imitation [jewelry]’ pursuant to note 8(a)²⁷ nor are they similar to the cited exemplars.” HQ 956014, dated June 8, 1994. See also HQ 083703, dated September 1, 1989, (holding that textile belts with metal fashion buckles did not meet the definition of “imitation jewelry,” and therefore could not be classified under heading 7117, HTSUS). Fashion belts, regardless of the constituent material, are excluded from heading 7117, HTSUS, because they do not satisfy the definition of “imitation jewelry.”

We next consider whether the subject belt is classifiable as a “clothing accessory.” The term “accessory” is not defined in the Harmonized Tariff Schedule or the ENs. When a tariff term is not defined in either the HTSUSA or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary. See Rohm & Haas Co. v. United States, 727 F.2d 1095 (CAFC 1984). In HQ 966506, dated August 26, 2003, CBP adopted a definition of the key term “accessory:”

Webster’s Third New International Dictionary, Unabridged (1986), defines accessory as **“an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else . . . any of various articles of apparel . . . that accent or otherwise complete one’s costume.”** . . . There is no requirement that accessories exhibit a reliance or dependence on the primary article(s). Accessories must be related to, or exhibit some connection to the primary article, and must be intended for use solely or principally as an accessory. **For example belts used as clothing accessories need not rely or depend on a particular article of clothing. Fashion**

²⁶In this ruling, we are not considering belts used for commercial purposes, such as tool belts. See New York Ruling Letter (NY) F87573, dated June 14, 2000.

²⁷Chapter 71, note 8(a) of the 1994 HTSUS corresponds to chapter 71, note 9(a) of the 2008 HTSUS.

ionable belt accessories . . . are often used for adornment or to compliment [sic.] clothing. (Emphasis added)

The subject articles satisfies the definition of “accessory.” The metal belt is not essential, but adds to the beauty of the wearer’s clothing. The belt “accent[s] or otherwise complete[s] one’s costume.”

We recognize that there has been some inconsistency in the classification of fashion belts. While textile or plastic belts are generally classified as clothing accessories, metal belts have been classified as both clothing accessories and imitation jewelry. See NY L88204, dated November 17, 2005 (classification of plastic belts under heading 3926, HTSUS, which provides for “. . . articles of apparel and clothing accessories”); NY I81111, dated April 29, 2002 (classification of a woven textile belt under heading 6217, HTSUS, which provides for “other made up clothing accessories”); NY 875846, dated July 22, 1992 (classification of an aluminum chain belt under heading 7616 as “other articles of aluminum”); and NY L88846, dated November 18, 2005 (classification of a metal chain belt under heading 7117, HTSUS, as imitation jewelry). It is CBP’s position that belts are classifiable as clothing accessories regardless of the component materials. We note that the HTSUS does not specifically contain a provision for clothing accessories of base metal. Metal clothing accessories are therefore classified according to their constituent material.

HOLDING:

By application of GRI 1 and GRI 3(b), the subject metal chain belt is classifiable according to its constituent material. Unfortunately, ruling letter NY K89513 does not specify the constituent material of the subject belt. On publication of the final revocation of this ruling letter, if you still wish you may submit your request to CBP, National Commodity Specialist Division, One Penn Plaza, 10th Floor, New York, NY 10119.

EFFECT ON OTHER RULINGS:

NY K89513, dated September 17, 2004, is hereby revoked. In accordance with 19 USC § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O’Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

HQ H011762

April 16, 2008

CLA-2 OT:RR:CTF:TCM H011762 JER**CATEGORY:** Classification**TARIFF NO.:** 7419.99.5050, 3926.20.9050,

8007.0050, 7326.90.8587

MR. ARTHUR W. BODEK
GRUNFELD, DESIDERIO, LEBOWITZ,
SILVERMAN & KLESTADT LLP
399 Park Avenue, 25th Floor
New York, NY 10022-4877

RE: Classification of certain metal chain fashion belts; Revocation of New York Ruling Letters (NY) K82771, NY K86961, and NY K87657, and Modification of NY K86935

DEAR MR. BODEK:

Pursuant to your binding ruling requests sent on behalf of Liz Claiborne, Inc. (Claiborne), the Bureau of Customs and Border Protection (CBP) issued four ruling letters concerning the classification of certain women's belts. In these rulings, New York Ruling Letter, (NY) K82771, dated February 6, 2004, NY K86961, dated June 22, 2004, NY K87657, dated July 19, 2004, and NY K86935, dated June 21, 2004, the belts were classified as "articles of imitation jewelry" under heading 7117 of the Harmonized Tariff Schedule of the United States (HTSUS). We have since reviewed these rulings and find them to be 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 modifications and revocation was published on March 5, 2008, in the Customs Bulletin, Volume 42, No. 11. No comments were received in response to this notice.

FACTS:

Eight styles were submitted for consideration in the four rulings under review. Seven of those styles are currently under review.

The first style, submitted for consideration in New York Ruling (NY) K82771, is a belt constructed of brass²⁸ with five charms together spelling "Juicy" hanging from the chain of the belt. Each charm is constructed of brass with numerous small glass stones on the front. At the point of closure, there is also a heart-shaped charm bearing the phrase "Juicy Couture" and a separate charm in the shape of the letter "J," both also constructed of brass. The belt is secured by an adjustable bar and ring closure. The belt is imported with a pouch constructed of an unlined lightweight cotton fabric with an elastic man-made fiber drawstring. The pouch is considered ordinary

²⁸Brass is an alloy of copper. See wordnet.princeton.edu/perl/webwn

packing when imported together with the belt and is therefore not separately classifiable.

Five styles, BTRU1238, BTRU1292, BTRU1130, BTRU1267, and WXRUW119, were submitted for consideration in NY K86935. Only four of these samples, BTRU1238, BTRU1292, BTRU1130 and BTRU1267 are currently under review.

Style BTRU1238 is a belt consisting of numerous plastic pearl-like beads, and a textile tie of 75% rayon and 25% nylon that allows the belt to be tied around the waist. The textile tie is attached to the beads by metal rings, and the beads are held together by a textile material.

Style BTRU1292 is a belt consisting of numerous plastic pearl-like beads, held together by minor steel fittings. The item also features a steel drop chain and a buckle composed of 60% tin, 35% plastic and 5% glass.

Style BTRU1130 is a belt consisting of a 75% brass and 25% steel chain and a 7-inch drop, and a 100% polyester ribbon running through the chain. The end of the drop features an additional 1-inch piece of ribbon.

Style BTRU1267 is a belt consisting of a 100% steel chain with a 100% polyester fabric tie attached to steel rings located at the end of the chain. There is also a piece of 100% polyester fabric that runs through the steel chain.

One sample was submitted for consideration in NY K86961. The sample, a woman's PVC/Metal "Flower Belt," style number BTRU1183, consists of an iron link chain with a PVC lacing and a detachable artificial flower made of PVC.

One sample was submitted for consideration in NY K87657. The sample, referred to as PVC/Metal "Flower Belt" Style BTR1192/BTRU1183 (Revised) is a women's belt which consists of a chain made of iron links with a PVC lacing. The front of the belt is characterized by a large, permanently attached, flower constructed of the same PVC material.

ISSUE:

What is the proper classification, under the HTSUS, for the subject fashion belts?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order. The HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914: * * *
3926.20	Articles of apparel and clothing accessories (including gloves, mittens and mitts): * * *
	Other:

		*	*	*
3926.20.90	Other:			
		*	*	*
3926.20.90.50	Other			
		*	*	*
7117	Imitation jewelry:			
	Of base metal, whether or not plated with precious metal:			
		*	*	*
7117.19	Other:			
		*	*	*
	Other:			
		*	*	*
7117.19.90	Other			
		*	*	*
7326	Other articles of iron or steel:			
		*	*	*
7326.90	Other:			
	Other:			
		*	*	*
	Other:			
		*	*	*
7326.90.85	Other			
7326.90.8587	Other			
		*	*	*
7419	Other articles of copper:			
		*	*	*
	Other:			
		*	*	*
7419.99	Other:			
		*	*	*
	Other:			
		*	*	*

7419.99.50		Other:		
			*	*
				*
7419.99.5050				Other
			*	
				*
8007.00	Other articles of tin:			
			*	*
				*
8007.00.50	Other			
			*	*
				*

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. The legal notes to Section XV²⁹ provide, in pertinent part:

Section XV: Base metals and articles of base metal

1. This section does not cover:

* * *

(e) Goods of Chapter 71 (for example, precious metal alloys, base metal clad with precious metal, imitation jewelry);

* * *

The legal notes to chapter 71 state, in pertinent part:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

(a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia. . . .

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of Note 9 above. . . .

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The ENs to heading 7117, HTSUS, provide, in pertinent part:

For the purposes of this heading, the expression **imitation jewellery**, as defined in Note 11 to this Chapter, is restricted to small objects of

²⁹This section covers Chapters 72 through 83 of the HTSUS.

personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc. . . .

(Emphasis in original)

* * *

Initially, we note that the subject imports are composite goods, consisting of various components, such as metal chains, glass stones, PVC flowers, textile ties, plastic beads, textile ribbon, etc. As a general rule, composite merchandise is classified according to GRI 3. According to GRI 3(b), composite goods are to be classified “as if they consisted of the material or component which gives them their essential character. . . .” The term “essential character,” refers to “the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article.” Headquarters Ruling Letter (HQ) 956538, dated November 29, 1994; See also *Better Home Plastics Corp. v. United States*, 20 CIT. 221; 916 F. Supp. 1265 (1996). When composite goods cannot be classified by reference to 3(b), “they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.” See GRI 3(c).

In NY K87657, CBP determined that no component imparted essential character to style BTR1192/BTRU1183. As a result, it was classified according to GRI 3(c). We disagree with this conclusion. It is now CBP’s position that all styles currently under consideration are classifiable according to GRI 3(b).

We will first consider styles BTRU1238 and BTRU1292 of NY K86935. Both of these styles are constructed primarily of pearl-like plastic beads. The other components are minor accessories. As a result, the essential character for each style is imparted by the plastic beads. BTRU1238 and BTRU1292 will therefore be classified as if they consisted only of plastic. The other five styles are composed, primarily, of metal chain belts. These metal chains feature prominently on the belt and impart essential character to each style. These belts will therefore be classified as if they consisted only of metal.

At issue is whether these seven belts are identifiable as imitation jewelry or as clothing accessories. In the above-mentioned rulings, we determined that the belts were identifiable as imitation jewelry. We now find that conclusion to be in error.

Each of the subject belts were originally classified under heading 7117, HTSUS, as “articles of imitation jewelry.” The term “imitation jewelry” applies only to “small objects of personal adornment.” See chapter 71, note 9(a). These objects include, but are not limited to, “rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia.” Belts are not specifically named in this list of exemplars. Classification under heading 7117, HTSUS, is therefore dependent upon the canon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “Where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States (Nissho)*, 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires

that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157.

Fashion belts do not share the same essential characteristics as the listed exemplars. The named articles are all “small objects of personal adornment” which share the characteristics of being generally lightweight and comparatively small in size. Belts, on the other hand, must be large enough to encircle the wearer’s waist, a circumference which is larger than the finger, neck or wrist. Furthermore, each of the articles listed is primarily decorative. Any functional use is subsidiary to the primary purpose of adornment. While belts may be used for their functional and decorative qualities, neither use is clearly primary³⁰. By application of *ejusdem generis*, therefore, the subject belts are excluded from heading 7117, HTSUS.

This conclusion is consistent with CBP practice with respect to plastic and textile belts. CBP has generally excluded such items from heading 7117, HTSUS, stating that they “do not meet the definition of ‘imitation [jewelry]’ pursuant to note 8(a)³¹ nor are they similar to the cited exemplars.” HQ 956014, dated June 8, 1994. See also HQ 083703, dated September 1, 1989, (holding that textile belts with metal fashion buckles did not meet the definition of “imitation jewelry,” and therefore could not be classified under heading 7117, HTSUS). Fashion belts, regardless of the constituent material, are excluded from heading 7117, HTSUS, because they do not satisfy the definition of “imitation jewelry.”

We next consider whether the subject belts are classifiable as “clothing accessories.” The term “accessory” is not defined in the Harmonized Tariff Schedule or the ENs. When a tariff term is not defined in either the HTSUSA or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary. See *Rohm & Haas Co. v. United States*, 727 F.2d 1095 (CAFC 1984). In HQ 966506, dated August 26, 2003, CBP adopted a definition of the key term “accessory:”

Webster’s Third New International Dictionary, Unabridged (1986), defines accessory as **“an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else . . . any of various articles of apparel . . . that accent or otherwise complete one’s costume.”** . . . There is no requirement that accessories exhibit a reliance or dependence on the primary article(s). Accessories must be related to, or exhibit some connection to the primary article, and must be intended for use solely or principally as an accessory. **For example belts used as clothing accessories need not rely or depend on a particular article of clothing. Fashionable belt accessories . . . are often used for adornment or to compliment [sic.] clothing.** (Emphasis added)

The subject articles satisfy the definition of “accessory.” The subject belts are not essential, but they add to the beauty of the wearer’s clothing. These belts “accent or otherwise complete one’s costume.”

³⁰In this ruling, we are not considering belts used for commercial purposes, such as tool belts. See New York Ruling Letter (NY) F87573, dated June 14, 2000.

³¹Chapter 71, note 8(a) of the 1994 HTSUS corresponds to chapter 71, note 9(a) of the 2008 HTSUS.

We recognize that there has been some inconsistency in the classification of fashion belts. While textile or plastic belts are uniformly classified as clothing accessories, metal belts have been classified as both clothing accessories and imitation jewelry. See NY L88204, dated November 17, 2005 (classification of plastic belts under heading 3926, HTSUS, which provides for “. . . articles of apparel and clothing accessories”); NY I81111, dated April 29, 2002 (classification of a woven textile belt under heading 6217, HTSUS, which provides for “other made up clothing accessories”); NY 875846, dated July 22, 1992 (classification of an aluminum chain belt under heading 7616 as “other articles of aluminum”); and NY L88846, dated November 18, 2005 (classification of a metal chain belt under heading 7117, HTSUS, as imitation jewelry). It is CBP’s position that belts are classifiable as clothing accessories regardless of the component materials. We note that the HTSUS does not specifically provide a provision for clothing accessories of metal. Metal clothing accessories are therefore classified according to their constituent material.

HOLDING:

By application of GRI 1 and GRI 3(b), the metal chain belt of NY K82771 and style number BTRU1130 of ruling NY K86935 are classifiable under heading 7419, HTSUS. Specifically, they are classifiable under subheading 7419.99.5050, HTSUSA, which provides for “Other articles of copper: Other: Other: Other: Other.” The 2008 general, column one rate of duty is free.

By application of GRI 1 and GRI 3(b), Styles BTRU1238 and BTRU1292 are classifiable under heading 3926, HTSUS. Specifically, they are classifiable under subheading 3926.20.9050, HTSUSA, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914: Articles of apparel and clothing accessories (including gloves, mittens and mitts): Other: Other: Other.” The 2008 general, column one rate of duty is 5 percent *ad valorem*.

By application of GRI 1 and GRI 3(b), Style BTRU1267, the Flower Style Belt of ruling NY K86935, style number BTR1192/BTRU1183 (revised) of NY K87657, and style number BTRU1183 of NY K86961, are classifiable under heading 7326, HTSUS. Specifically, they are classifiable under subheading 7326.90.8587, HTSUSA, which provides for “[o]ther articles of iron or steel: Other: Other: Other: Other. . . Other.” The 2008 general, column one rate of duty is 2.9 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY K82771, dated February 6, 2004, NY K86961, dated June 22, 2004, and K87657, dated July 19, 2004, are hereby revoked. NY K86935, dated June 21, 2004, is hereby modified. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O’Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT I]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H011764
April 16, 2008
CLA-2 OT:RR:CTF:TCM H011764 JER
CATEGORY: Classification
TARIFF NO.: 7419.99.5050

MS. KAREN RIGGS
TALBOTS
174 Beal Street
Hingham, MA 02043

RE: Classification of certain metal chain fashion belts; Revocation of New York Ruling (NY) K86932

DEAR MS. RIGGS:

On June 29, 2004, the Bureau of Customs and Border Protection (CBP), issued to you New York Ruling Letter, (NY) K86932, in which a brass chain belt was classified as an “article of imitation jewelry” under heading 7117 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have since reviewed NY K86932 and find it to be 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 was published on March 5, 2008, in the Customs Bulletin, Volume 42, No. 11. No comments were received in response to this notice.

FACTS:

The subject article, style number 45066425, is a ladies’ belt composed of a 100% polyester ribbon and a 100% brass metal chain³². The ribbon is braided throughout the chain portion, and two ribbon sections hang from either end for tying.

ISSUE:

Is the subject belt classifiable as imitation jewelry or as a clothing accessory?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

7117 Imitation jewelry:

³²Brass is an alloy of copper. See wordnet.princeton.edu/perl/webwn

Of base metal, whether or not plated with precious metal:

		*	*	*
7117.19	Other:			
		*	*	*
	Other:			
		*	*	*
7117.19.90	Other			
		*	*	*
7419	Other articles of copper:			
		*	*	*
	Other:			
		*	*	*
7419.99	Other:			
		*	*	*
	Other:			
		*	*	*
7419.99.50	Other:			
		*	*	*
7419.99.5050	Other			
		*	*	*

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. The legal notes to Section XV³³ provide, in pertinent part:

Section XV: Base metals and articles of base metal

1. This section does not cover:

* * *

(e) Goods of Chapter 71 (for example, precious metal alloys, base metal clad with precious metal, imitation jewelry);

* * *

The legal notes to chapter 71 state, in pertinent part:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

³³This section covers Chapters 72 through 83 of the HTSUS.

(a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia. . . .

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of Note 9 above. . . .

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The ENs to heading 7117, HTSUS, provide, in pertinent part:

For the purposes of this heading, the expression **imitation jewellery**, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc. . . .

(Emphasis in original)

* * *

Initially, we note that the subject import is a composite good, consisting of both metal and a non-metal component, i.e. the polyester ribbon. According to GRI 3(b), composite goods are to be classified “as if they consisted of the material or component which gives them their essential character. . . .” The term “essential character,” refers to “the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article.” Headquarters Ruling Letter (HQ) 956538, dated November 29, 1994; See also Better Home Plastics Corp. v. United States, 20 CIT. 221; 916 F. Supp. 1265 (1996). In the instant matter the essential character of the belt is the metal chain. The composite belt will therefore be classified as if it consisted only of brass. At issue is whether the metal belt is identifiable as imitation jewelry or as a clothing accessory.

In NY K86932, the subject belt was originally classified under heading 7117, HTSUS, as an “article of imitation jewelry.” Upon review, we find that determination to be in error. The term “imitation jewelry” applies only to “small objects of personal adornment.” See chapter 71, note 9(a). These objects include, but are not limited to, “rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia.” Belts are not specifically named in this list of exemplars. Classification under heading 7117, HTSUS, is therefore dependent upon the canon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “Where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” Nissho-Iwai American Corp. v. United States (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” Id. at 157.

Fashion belts do not share the same essential characteristics as the listed exemplars. The named articles are all “small objects of personal adornment” which share the characteristics of being generally lightweight and comparatively small in size. Belts, on the other hand, must be large enough to encircle the wearer’s waist, a circumference which is larger than the finger, neck or wrist. Furthermore, each of the articles listed is primarily decorative. Any functional use is subsidiary to the primary purpose of adornment. While belts may be used for their functional and decorative qualities, neither use is clearly primary³⁴. By application of *ejusdem generis*, therefore, the subject belts are excluded from heading 7117, HTSUS.

This conclusion is consistent with CBP practice with respect to plastic and textile belts. CBP has generally excluded such items from heading 7117, HTSUS, stating that they “do not meet the definition of ‘imitation [jewelry]’ pursuant to note 8(a)³⁵ nor are they similar to the cited exemplars.” HQ 956014, dated June 8, 1994. See also HQ 083703, dated September 1, 1989, (holding that textile belts with metal fashion buckles did not meet the definition of “imitation jewelry,” and therefore could not be classified under heading 7117, HTSUS). Fashion belts, regardless of the constituent material, are excluded from heading 7117, HTSUS, because they do not satisfy the definition of “imitation jewelry.”

We next consider whether the subject belt is classifiable as a “clothing accessory.” The term “accessory” is not defined in the Harmonized Tariff Schedule or the ENs. When a tariff term is not defined in either the HTSUSA or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary. See *Rohm & Haas Co. v. United States*, 727 F.2d 1095 (CAFC 1984). In HQ 966506, dated August 26, 2003, CBP adopted a definition of the key term “accessory:”

Webster’s Third New International Dictionary, Unabridged (1986), defines accessory as **“an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else any of various articles of apparel . . . that accent or otherwise complete one’s costume.”** . . . There is no requirement that accessories exhibit a reliance or dependence on the primary article(s). Accessories must be related to, or exhibit some connection to the primary article, and must be intended for use solely or principally as an accessory. **For example belts used as clothing accessories need not rely or depend on a particular article of clothing. Fashionable belt accessories . . . are often used for adornment or to compliment [sic.] clothing.** (Emphasis added)

The subject article satisfies the definition of “accessory.” The metal belt is not essential, but adds to the beauty of the wearer’s clothing. The belt “accent[s] or otherwise complete[s] one’s costume.”

We recognize that there has been some inconsistency in the classification of fashion belts. While textile or plastic belts are generally classified as clothing accessories, metal belts have been classified as both clothing acces-

³⁴In this ruling, we are not considering belts used for commercial purposes, such as tool belts. See New York Ruling Letter (NY) F87573, dated June 14, 2000.

³⁵Chapter 71, note 8(a) of the 1994 HTSUS corresponds to chapter 71, note 9(a) of the 2008 HTSUS.

sories and imitation jewelry. See NY L88204, dated November 17, 2005 (classification of plastic belts under heading 3926, HTSUS, which provides for “. . . articles of apparel and clothing accessories”); NY I81111, dated April 29, 2002 (classification of a woven textile belt under heading 6217, HTSUS, which provides for “other made up clothing accessories”); NY 875846, dated July 22, 1992 (classification of an aluminum chain belt under heading 7616 as “other articles of aluminum”); and NY L88846, dated November 18, 2005 (classification of a metal chain belt under heading 7117, HTSUS, as imitation jewelry). It is CBP’s position that belts are classifiable as clothing accessories regardless of the component materials. We note that the HTSUS does not specifically contain a provision for clothing accessories of metal or brass. Metal clothing accessories are therefore classified according to their constituent material.

HOLDING:

By application of GRI 1 and GRI 3(b), the subject metal chain belt is classifiable under heading 7419, HTSUS. Specifically, it is classifiable under subheading 7419.99.5050, HTSUSA, which provides for “Other articles of copper: Other: Other: Other: Other: Other.” The 2008 general, column one rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY K86932, dated June 29, 2004, is hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O’Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT J]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H011765
April 16, 2008
CLA-2 OT:RR:CTF:TCM H011765 JER
CATEGORY: Classification
TARIFF NO.: 7326.90.8587

MR. JERRY ARMANI
MAMIYE BROTHERS, INC.
112 West 34th Street, Suite 1000
New York, NY 10120-0018

RE: Classification of certain metal chain fashion belts; Revocation of New York Ruling (NY) K86856

DEAR MR. ARMANI:

On June 10, 2004, the Bureau of Customs and Border Protection (CBP) issued to you New York Ruling Letter, (NY) K86856, in which a metal chain

belt was classified as an “article of imitation jewelry” under heading 7117 of the Harmonized Tariff Schedule of the United States (HTSUS). We have since reviewed NY K86856 and find it to be 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 was published on March 5, 2008, in the Customs Bulletin, Volume 42, No. 11. No comments were received in response to this notice.

FACTS:

The subject article is a girls’ belt made of chrome plated steel chain with pink ribbon of 100% polyester woven through the links. The belt has a chrome plated steel lobster claw clasp that is used to adjust the size.

ISSUE:

Is the subject belt classifiable as imitation jewelry or as a clothing accessory?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

7117	Imitation jewelry:			
	Of base metal, whether or not plated with precious metal:			
		*	*	*
7117.19	Other:			
		*	*	*
	Other:			
		*	*	*
7117.19.90	Other			
		*	*	*
7326	Other articles of iron or steel:			
		*	*	*
7326.90	Other:			
	Other:			
		*	*	*
	Other:			
		*	*	*

7326.90.85		Other
	*	* *
7326.90.8587		Other
	*	* *

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. The legal notes to Section XV³⁶ provide, in pertinent part:

Section XV: Base metals and articles of base metal

1. This section does not cover:

* * *

(e) Goods of Chapter 71 (for example, precious metal alloys, base metal clad with precious metal, imitation jewelry);

* * *

The legal notes to chapter 71 state, in pertinent part:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

(a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia. . . .

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of Note 9 above. . . .

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The ENs to heading 7117, HTSUS, provide, in pertinent part:

For the purposes of this heading, the expression **imitation jewellery**, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc. . . .

(Emphasis in original)

* * *

Initially, we note that the subject import is a composite good, consisting of both metal and a non-metal component, i.e., the polyester ribbon. According to GRI 3(b), composite goods are to be classified “as if they consisted of the material or component which gives them their essential character. . . .” The term “essential character,” refers to “the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the

³⁶This section covers Chapters 72 through 83 of the HTSUS.

structure, core or condition of the article.” Headquarters Ruling Letter (HQ) 956538, dated November 29, 1994; See also Better Home Plastics Corp. v. United States, 20 CIT. 221; 916 F. Supp. 1265 (1996). In the instant matter the essential character of the belt is the metal linked chain. The composite belt will therefore be classified as if it consisted only of metal. At issue is whether the metal belt is identifiable as imitation jewelry or as clothing accessories.

In NY K86856, the subject belt was originally classified under heading 7117, HTSUS, as an “article of imitation jewelry.” Upon review, we find that determination to be in error. The term “imitation jewelry” applies only to “small objects of personal adornment.” See chapter 71, note 9(a). These objects include, but are not limited to, “rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia.” Belts are not specifically named in this list of exemplars. Classification under heading 7117, HTSUS, is therefore dependent upon the canon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “Where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” Nissho-Iwai American Corp. v. United States (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” Id. at 157.

Fashion belts do not share the same essential characteristics as the listed exemplars. The named articles are all “small objects of personal adornment” which share the characteristics of being generally lightweight and comparatively small in size. Belts, on the other hand, must be large enough to encircle the wearer’s waist, a circumference which is larger than the finger, neck or wrist. Furthermore, each of the articles listed is primarily decorative. Any functional use is subsidiary to the primary purpose of adornment. While belts may be used for their functional and decorative qualities, neither use is clearly primary³⁷. By application of *ejusdem generis*, therefore, the subject belts are excluded from heading 7117, HTSUS.

This conclusion is consistent with CBP practice with respect to plastic and textile belts. CBP has generally excluded such items from heading 7117, HTSUS, stating that they “do not meet the definition of ‘imitation [jewelry]’ pursuant to note 8(a)³⁸ nor are they similar to the cited exemplars.” HQ 956014, dated June 8, 1994. See also HQ 083703, dated September 1, 1989, (holding that textile belts with metal fashion buckles did not meet the definition of “imitation jewelry,” and therefore could not be classified under heading 7117, HTSUS). Fashion belts, regardless of the constituent material, are excluded from heading 7117, HTSUS, because they do not satisfy the definition of “imitation jewelry.”

³⁷In this ruling, we are not considering belts used for commercial purposes, such as tool belts. See New York Ruling Letter (NY) F87573, dated June 14, 2000.

³⁸Chapter 71, note 8(a) of the 1994 HTSUS corresponds to chapter 71, note 9(a) of the 2008 HTSUS.

We next consider whether the subject belt is classifiable as “clothing accessories.” The term “accessory” is not defined in the Harmonized Tariff Schedule or the ENs. When a tariff term is not defined in either the HTSUSA or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary. See Rohm & Haas Co. v. United States, 727 F.2d 1095 (CAFC 1984). In HQ 966506, dated August 26, 2003, CBP adopted a definition of the key term “accessory:”

Webster’s Third New International Dictionary, Unabridged (1986), defines accessory as **“an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else any of various articles of apparel . . . that accent or otherwise complete one’s costume.”** . . . There is no requirement that accessories exhibit a reliance or dependence on the primary article(s). Accessories must be related to, or exhibit some connection to the primary article, and must be intended for use solely or principally as an accessory. **For example belts used as clothing accessories need not rely or depend on a particular article of clothing. Fashionable belt accessories . . . are often used for adornment or to compliment [sic.] clothing.** (Emphasis added)

The subject article satisfy the definition of “accessory.” The metal belt is not essential, but adds to the beauty of the wearer’s clothing. The belt “accent[s] or otherwise complete[s] one’s costume.”

We recognize that there has been some inconsistency in the classification of fashion belts. While textile or plastic belts are uniformly classified as clothing accessories, metal belts have been classified as both clothing accessories and imitation jewelry. See NY L88204, dated November 17, 2005 (classification of plastic belts under heading 3926, HTSUS, which provides for “. . . articles of apparel and clothing accessories”); NY I81111, dated April 29, 2002 (classification of a woven textile belt under heading 6217, HTSUS, which provides for “other made up clothing accessories”); NY 875846, dated July 22, 1992 (classification of an aluminum chain belt under heading 7616 as “other articles of aluminum”); and NY L88846, dated November 18, 2005 (classification of a metal chain belt under heading 7117, HTSUS, as imitation jewelry). It is CBP’s position that belts are classifiable as clothing accessories regardless of the component materials. We note that the HTSUS does not specifically contain a provision for clothing accessories of metal. Metal clothing accessories are therefore classified according to their constituent material.

HOLDING:

By application of GRI 1 and GRI 3(b), the subject metal chain belt is classifiable under heading 7326, HTSUS. Specifically, it is classifiable under subheading 7326.90.8587, HTSUSA, which provides for: “Other articles of iron or steel: Other: Other: Other: Other. . . .Other.” The 2008 general, column one rate of duty is 2.9 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY K86856, dated June 10, 2004, is hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O'Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT K]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H011766
April 16, 2008
CLA-2 OT:RR:CTF:TCM H011766 JER
CATEGORY: Classification
TARIFF NO.: 7419.99.5050

MS. MARIA E. JULIA
NEWPORT NEWS, INC.
711 Third Avenue
New York, NY 10017

RE: Classification of certain metal chain fashion belts; Revocation of New York Ruling (NY) J89515

DEAR MS. JULIA:

On October 24, 2003, the Bureau of Customs and Border Protection (CBP) issued to you New York Ruling Letter, (NY) J89515, in which a metal belt was classified as an "article of imitation jewelry" under heading 7117 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have since reviewed NY J89515 and find it to be 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 was published on March 5, 2008, in the Customs Bulletin, Volume 42, No. 11. No comments were received in response to this notice.

FACTS:

The subject article, the Mayan Belt, Style/Item Number S04-05-129, is a ladies' belt measuring 52" in length made of 100% brass metal discs which are joined with glass beads and strung on a 100% cotton cord.³⁹

ISSUE:

Is the subject belt classifiable as imitation jewelry or as a clothing accessory?

³⁹Brass is an alloy of copper. See wordnet.princeton.edu/perl/webwn

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

7117	Imitation jewelry:			
	Of base metal, whether or not plated with precious metal:			
		*	*	*
7117.19	Other:			
		*	*	*
	Other:			
		*	*	*
7117.19.90	Other			
		*	*	*
7419	Other articles of copper:			
		*	*	*
	Other:			
		*	*	*
7419.99	Other:			
		*	*	*
	Other:			
		*	*	*
7419.99.50	Other:			
		*	*	*
7419.99.5050	Other			
		*	*	*

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. The legal notes to Section XV provide, in pertinent part:⁴⁰

Section XV: Base metals and articles of base metal

1. This section does not cover:

⁴⁰This section covers Chapters 72 through 83 of the HTSUS.

* * *

(e) Goods of Chapter 71 (for example, precious metal alloys, base metal clad with precious metal, imitation jewelry);

* * *

The legal notes to chapter 71 state, in pertinent part:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

(a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia above. . . .

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of Note 9 above. . . .

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The ENs to heading 7117, HTSUS, provide, in pertinent part:

For the purposes of this heading, the expression **imitation jewellery**, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc. . . .

(Emphasis in original).

* * *

Initially, we note that the subject import is a composite good, consisting of both metal and various non-metal components, i.e. glass beads and cotton cord. According to GRI 3(b), composite goods are to be classified “as if they consisted of the material or component which gives them their essential character. . . .” The term “essential character,” refers to “the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article.” Headquarters Ruling Letter (HQ) 956538, dated November 29, 1994; See also *Better Home Plastics Corp. v. United States*, 20 CIT. 221; 916 F. Supp. 1265 (1996). In the instant matter the essential character of the belt are the metal disks. The composite belt will therefore be classified as if it consisted only of brass. At issue is whether the metal belt is identifiable as imitation jewelry or as a clothing accessory.

In NY J89515, the subject belt was originally classified under heading 7117, HTSUS, as an “article of imitation jewelry.” Upon review, we find that determination to be in error. The term “imitation jewelry” applies only to “small objects of personal adornment.” See chapter 71, note 9(a). These objects include, but are not limited to, “rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia.” Belts are not specifically named in this

list of exemplars. Classification under heading 7117, HTSUS, is therefore dependent upon the canon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “Where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States* (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Id.* at 157.

Fashion belts do not share the same essential characteristics as the listed exemplars. The named articles are all “small objects of personal adornment” which share the characteristics of being generally lightweight and comparatively small in size. Belts, on the other hand, must be large enough to encircle the wearer’s waist, a circumference which is larger than the finger, neck or wrist. Furthermore, each of the articles listed is primarily decorative. Any functional use is subsidiary to the primary purpose of adornment. While belts may be used for their functional and decorative qualities, neither use is clearly primary⁴¹. By application of *ejusdem generis*, therefore, the subject belts are excluded from heading 7117, HTSUS.

This conclusion is consistent with CBP practice with respect to plastic and textile belts. CBP has uniformly excluded such items from heading 7117, HTSUS, stating that they “do not meet the definition of ‘imitation [jewelry]’ pursuant to note 8(a)⁴² nor are they similar to the cited exemplars.” HQ 956014, dated June 8, 1994. See also HQ 083703, dated September 1, 1989, (holding that textile belts with metal fashion buckles did not meet the definition of “imitation jewelry,” and therefore could not be classified under heading 7117, HTSUS). Fashion belts, regardless of the constituent material, are excluded from heading 7117, HTSUS, because they do not satisfy the definition of “imitation jewelry.”

We next consider whether the subject belt is classifiable as “clothing accessories.” The term “accessory” is not defined in the Harmonized Tariff Schedule or the ENs. When a tariff term is not defined in either the HTSUSA or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary. See *Rohm & Haas Co. v. United States*, 727 F.2d 1095 (CAFC 1984). In HQ 966506, dated August 26, 2003, CBP adopted a definition of the key term “accessory.”

Webster’s Third New International Dictionary, Unabridged (1986), defines accessory as **“an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else . . . any of various articles of apparel . . . that accent or otherwise complete one’s costume.”** . . . There is no requirement that accessories exhibit a reliance or dependence on the primary article(s). Accessories must be related to, or exhibit some connection to the primary article, and must be intended for use solely or principally as an accessory. **For example belts used as clothing accessories**

⁴¹ In this ruling, we are not considering belts used for commercial purposes, such as tool belts. See New York Ruling Letter (NY) F87573, dated June 14, 2000.

⁴² Chapter 71, note 8(a) of the 1994 HTSUS corresponds to chapter 71, note 9(a) of the 2008 HTSUS.

need not rely or depend on a particular article of clothing. Fashionable belt accessories . . . are often used for adornment or to compliment [sic.] clothing. (Emphasis added)

The subject article satisfies the definition of “accessory.” The metal belt is not essential, but adds to the beauty of the wearer’s clothing. The belt “accent[s] or otherwise complete[s] one’s costume.”

We recognize that there has been some inconsistency in the classification of fashion belts. While textile or plastic belts are generally classified as clothing accessories, metal belts have been classified as both clothing accessories and imitation jewelry. See NY L88204, dated November 17, 2005 (classification of plastic belts under heading 3926, HTSUS, which provides for “. . . articles of apparel and clothing accessories”); NY I81111, dated April 29, 2002 (classification of a woven textile belt under heading 6217, HTSUS, which provides for “other made up clothing accessories”); NY 875846, dated July 22, 1992 (classification of an aluminum chain belt under heading 7616 as “other articles of aluminum”); and NY L88846, dated November 18, 2005 (classification of a metal chain belt under heading 7117, HTSUS, as imitation jewelry). It is CBP’s position that belts are classifiable as clothing accessories regardless of the component materials. We note that the HTSUS does not specifically contain a provision for clothing accessories of brass. Metal clothing accessories are therefore classified according to their constituent material.

HOLDING:

By application of GRI 1 and GRI 3(b), the subject metal chain belt is classifiable under heading 7419, HTSUS. Specifically, it is classifiable under subheading 7419.99.5050, HTSUSA, which provides for: “Other articles of copper: Other: Other: Other: Other.” The 2008 general, column one rate of duty is free.

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

EFFECT ON OTHER RULINGS:

NY J89515, dated October 24, 2003, is hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O’Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

		*	*	*
	Other:			
		*	*	*
7117.19.90	Other			
		*	*	*
7326	Other articles of iron or steel:			
		*	*	*
7326.90	Other:			
	Other:			
		*	*	*
		*	*	*
7326.90.85			Other	
		*	*	*
7326.90.8587				Other
	*	*		*

In addition to the terms of the headings, classification of goods under the HTSUS is governed by any applicable section or chapter notes. The legal notes to Section XV⁴³ provide, in pertinent part:

Section XV: Base metals and articles of base metal

1. This section does not cover:

* * *

(e) Goods of Chapter 71 (for example, precious metal alloys, base metal clad with precious metal, imitation jewelry);

* * *

The legal notes to chapter 71 state, in pertinent part:

9. For the purposes of heading 7113, the expression “articles of jewelry” means:

(a) Any small objects of personal adornment (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia. . . .

11. For the purposes of heading 7117, the expression “imitation jewelry” means articles of jewelry within the meaning of paragraph (a) of Note 9 above. . . .

⁴³ This section covers Chapters 72 through 83 of the HTSUS.

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The ENs to heading 7117, HTSUS, provide, in pertinent part:

For the purposes of this heading, the expression **imitation jewellery**, as defined in Note 11 to this Chapter, is restricted to small objects of personal adornment, such as those listed in paragraph (A) of the Explanatory Note to heading 71.13, e.g., rings, bracelets (other than wrist-watch bracelets), necklaces, ear-rings, cuff-links, etc. . . .

(Emphasis in original)

* * *

Initially, we note that the subject import is a composite good, consisting of both metal and various non-metal components, i.e. capiz shell, acrylic stone, plastic, wood, and feathers. According to GRI 3(b), composite goods are to be classified “as if they consisted of the material or component which gives them their essential character. . . .” The term “essential character,” refers to “the attribute which strongly marks or serves to distinguish what an article is; that which is indispensable to the structure, core or condition of the article.” Headquarters Ruling Letter (HQ) 956538, dated November 29, 1994; See also Better Home Plastics Corp. v. United States, 20 CIT 221; 916 F. Supp. 1265 (1996). In the instant matter the essential character of the belt is the metal linked chain. The composite belt will therefore be classified as if it consisted only of steel. At issue is whether the metal belt is identifiable as imitation jewelry or as clothing accessories.

In NY J80040, the subject belt was originally classified under heading 7117, HTSUS, as an “article of imitation jewelry.” Upon review, we find that determination to be in error. The term “imitation jewelry” applies only to “small objects of personal adornment.” See chapter 71, note 9(a). These objects include, but are not limited to, “rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia.” Belts are not specifically named in this list of exemplars. Classification under heading 7117, HTSUS, is therefore dependent upon the canon of construction known as *ejusdem generis*, which means literally, “of the same class or kind.” “Where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” Nissho-Iwai American Corp. v. United States (Nissho), 10 CIT 154, 156 (1986). “As applicable to classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” Id. at 157.

Fashion belts do not share the same essential characteristics as the listed exemplars. The named articles are all “small objects of personal adornment” which share the characteristics of being generally lightweight and comparatively small in size. Belts, on the other hand, must be large enough to encircle the wearer’s waist, a circumference which is larger than the finger, neck or wrist. Furthermore, each of the articles listed is primarily decora-

tive. Any functional use is subsidiary to the primary purpose of adornment. While belts may be used for their functional and decorative qualities, neither use is clearly primary⁴⁴. By application of *ejusdem generis*, therefore, the subject belts are excluded from heading 7117, HTSUS.

This conclusion is consistent with CBP practice with respect to plastic and textile belts. CBP has generally excluded such items from heading 7117, HTSUS, stating that they “do not meet the definition of ‘imitation [jewelry]’ pursuant to note 8(a)⁴⁵ nor are they similar to the cited exemplars.” HQ 956014, dated June 8, 1994. See also HQ 083703, dated September 1, 1989, (holding that textile belts with metal fashion buckles did not meet the definition of “imitation jewelry,” and therefore could not be classified under heading 7117, HTSUS). Fashion belts, regardless of the constituent material, are excluded from heading 7117, HTSUS, because they do not satisfy the definition of “imitation jewelry.”

We next consider whether the subject belt is classifiable as “clothing accessories.” The term “accessory” is not defined in the Harmonized Tariff Schedule or the ENs. When a tariff term is not defined in either the HTSUSA or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary. See *Rohm & Haas Co. v. United States*, 727 F.2d 1095 (CAFC 1984). In HQ 966506, dated August 26, 2003, CBP adopted a definition of the key term “accessory:”

Webster’s Third New International Dictionary, Unabridged (1986), defines accessory as **“an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else any of various articles of apparel . . . that accent or otherwise complete one’s costume.”** . . . There is no requirement that accessories exhibit a reliance or dependence on the primary article(s). Accessories must be related to, or exhibit some connection to the primary article, and must be intended for use solely or principally as an accessory. **For example belts used as clothing accessories need not rely or depend on a particular article of clothing. Fashionable belt accessories . . . are often used for adornment or to compliment [sic.] clothing.** (Emphasis added)

The subject article satisfies the definition of “accessory.” The metal belt is not essential, but adds to the beauty of the wearer’s clothing. This belt “accent[s] or otherwise complete[s] one’s costume.”

We recognize that there has been some inconsistency in the classification of fashion belts. While textile or plastic belts are generally classified as clothing accessories, metal belts have been classified as both clothing accessories and imitation jewelry. See NY L88204, dated November 17, 2005 (classification of plastic belts under heading 3926, HTSUS, which provides for “. . . articles of apparel and clothing accessories”); NY I81111, dated April 29, 2002 (classification of a woven textile belt under heading 6217, HTSUS, which provides for “other made up clothing accessories”); NY 875846, dated July 22, 1992 (classification of an aluminum chain belt under heading 7616

⁴⁴In this ruling, we are not considering belts used for commercial purposes, such as tool belts. See New York Ruling Letter (NY) F87573, dated June 14, 2000.

⁴⁵Chapter 71, note 8(a) of the 1994 HTSUS corresponds to chapter 71, note 9(a) of the 2008 HTSUS.

as “other articles of aluminum”); and NY L88846, dated November 18, 2005 (classification of a metal chain belt under heading 7117, HTSUS, as imitation jewelry). It is CBP’s position that belts are classifiable as clothing accessories regardless of the component materials. We note that the HTSUS does not specifically contain a provision for clothing accessories of metal. Metal clothing accessories are therefore classified according to their constituent material.

HOLDING:

By application of GRI 1 and GRI 3(b), the subject metal chain belt is classifiable under heading 7326, HTSUS. Specifically, it is classifiable under subheading 7326.90.8587, HTSUSA, which provides for: “Other articles of iron or steel: Other: Other: Other: Other. . . .Other.” The 2008 general, column one rate of duty is 2.9 percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY J80040, dated January 24, 2003, is hereby revoked. In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Ieva K. O’Rourke for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.