

U.S. Customs and Border Protection

General Notices

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

Washington, DC, July 2, 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.*

REVOCATION OF NEW YORK RULING LETTER N004573 AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN FLIP-FLOP SANDALS

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

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of certain flip-flop sandals.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title IV (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated

(HTSUSA), of certain flip-flop sandals made of an outer sole of rubber or plastic and an upper of scratched ethyl vinyl acetate (EVA), with a polyvinyl chloride trim (PVC) and a PVC trimmed foot bed. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 42, No. 9, on February 20, 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EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 14, 2008.

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 to 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. 9, on February 20, 2008, proposing to revoke New York (NY) ruling letter N004573 pertaining to the tariff classification of certain flip-flop sandals made of an outer sole of rubber or plastics and an upper of scratched ethyl vinyl acetate (EVA), with polyvinyl chloride trim (PVC). No comments were received in response to the notice. As stated in the proposed notice, this revocation will cover any rulings on the subject 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 ruling identified above. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, 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 N004573 and any other ruling not specifically identified, to reflect the proper tariff classification of the merchandise under heading 6402, HTSUSA, specifically in subheading 6402.99.3165, HTSUSA, which provides for, *inter alia*: "Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Other: Having uppers of which over 90 percent of the external surface area . . . is rubber or plastics . . . : Other: Other: Other: For women: Other," pursuant to the analysis set forth in HQ H008516 (Attachment A). Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it 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: June 25, 2008

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

Attachment:

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H008516
June 25, 2008
CLA-2 OT:RR:CTF:TCM H008516 JER
CATEGORY: Classification
TARIFF NO.: 6402.99.3165

MS. IRINA PARKER
AVON PRODUCTS, INC.
1251 Avenue of the Americas
New York, NY 10020-1196

RE: Revocation of NY N004573; 6402.99.3165, HTSUS; flip-flop sandals

DEAR MS. PARKER:

This is in response to your request for reconsideration of New York (“NY”) Ruling Letter N004573, issued on January 9, 2007, concerning the classification of certain merchandise under the Harmonized Tariff Schedule of the United States (“HTSUS”). At issue is the correct classification of the flip-flop sandal identified as 3 Flip Flops in a Bag, item PP365397 and imported by Avon Products, Inc. U.S. Customs and Border Protection (“CBP”) classified this merchandise under heading 6404, HTSUS, which provides for footwear with outer soles of rubber or plastics and uppers of textile material. After reviewing NY N004573, we have found that ruling to be in error. For the reasons set forth in this ruling, we are revoking NY N004573.

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 February 20, 2008, in the Customs Bulletin, Volume 42, No. 9. No comments were received in response to the notice.

FACTS:

The merchandise at issue is an open toe/heel, thong sandal with an outer sole of rubber or plastics and an upper of brushed or scratched ethyl vinyl acetate (EVA). The top piece is a toe criss-cross with a terry sock and EVA sole. The footwear has a polyvinyl chloride trim (PVC) around the toe criss-cross upper and a PVC trim along the foot bed. The flip-flops appear in three different colors, yellow, pink and blue. In N004573, CBP incorrectly identified the material of the upper as a textile fabric because of the appearance of fibers and the tactile surface. Upon further examination, we agree that the material of the upper is actually brushed EVA and not of textile material.

Avon has now provided CBP with additional information about the subject merchandise. We have considered your arguments and, based on the new information provided to CBP, we now conclude that the previous classification of your merchandise under heading 6404, HTSUS, was incorrect. Our reasoning is set forth in the “Law and Analysis” section below.

ISSUE:

Whether classification of the flip-flop sandal(s), item PP365397, is properly under heading 6404, HTSUS, or alternatively, heading 6402, 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:

6402	Other footwear with outer soles and uppers of rubber or plastics:	*	*	*
	Other footwear:			
6402.99	Other:			
	Other:			
	Having uppers of which over 90 percent of the external surface area (including any accessories or reinforcements such as those mentioned in note 4(a) to this chapter) is rubber or plastics (except footwear having a foxing or a foxing-like band applied or molded at the sole and overlapping the upper and except footwear designed to be worn over, or in lieu of, other footwear as a protection against water, oil, grease or chemicals or cold or inclement weather):	*	*	*
	Other:			
	Other.	*	*	*
6402.99.31				
	Other:			
	For women:			
	Other. . . .	*	*	*
6402.99.3165				
6404	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials:			
	Footwear with outer soles of rubber or plastics:	*	*	*
6404.19	Other:	*	*	*

Footwear with open toes or open heels; footwear of the slip-on type, that is held to the foot without the use of laces or buckles or other fasteners, the foregoing except footwear having a foxing or foxing-like band wholly or almost wholly of rubber or plastic applied or molded at the sole and overlapping the upper:

* * *

6404.19.35 Other.

CBP previously classified the flip-flop sandals at issue in heading 6404, HTSUS, as footwear with outer soles of rubber or plastics and uppers of textile materials. We viewed the uppers to be of textile material because there are visible fibers which protrude the surface of the footwear upper and are tactile in presentation. However, based on the sample and additional information provided to CBP and after re-examination of the subject merchandise, we are now of the view that the flip-flop sandals are not described in heading 6404, HTSUS.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. 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.

EN 64.02 explains:

This heading covers: *Thong-type* sandals in which the thongs are attached to the sole by plugs which lock into the holes of the soles.

* * *

It is your view that the correct classification of this merchandise is under heading 6402, HTSUS, as other footwear with outer soles and uppers of rubber or plastics. In Headquarters Ruling Letter (“HQ”) 966589, dated February 24, 2004, CBP ruled that certain men’s sandals were classifiable under heading 6402, HTSUS, because the plastic material comprised over 90 percent of the sandal’s external surface area and constituted the substance of the sandal’s upper. As we noted in HQ 966589, the Explanatory Notes to heading 6402, HTSUS, state that “other footwear . . . with uppers of rubber or plastics” are properly classifiable in heading 6402, HTSUS.

In the instant case, the flip-flop sandals are similar to the men’s sandal of HQ 966589, in that the uppers are composed almost entirely of ethyl vinyl acetate (EVA) with PVC trim. Like the sandals in HQ 966589, the uppers of the subject merchandise are made of over 90 percent plastic material and constitute the substance of this flip-flop sandal. Therefore, the flip-flop sandals are properly classified under heading 6402, HTSUS, specifically in subheading 6402.99.3165, HTSUS.

HOLDING:

By application of GRI 1, the flip-flop sandals, item PP365397, with uppers of scratched EVA and PVC trim are, classified in heading 6402, HTSUS, and are specifically provided for in subheading 6402.99.3165, HTSUS, which provides for: “Other footwear with outer soles and uppers of rubber or plastics: Other footwear: Other: Having uppers of which over 90 percent of the

external surface area . . . is rubber or plastic . . . : Other: Other, Other: For women: Other.” The column one, general rate of duty is 6 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N004573, dated January 9, 2007, is hereby revoked. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

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

**MODIFICATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF CERTAIN METAL SCREW/PLASTIC
ANCHOR KITS**

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

ACTION: Notice of modification of a tariff classification ruling letter and revocation of treatment relating to the classification of certain metal screw/plastic anchor kits.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is modifying a ruling letter relating to the tariff classification of certain metal screw/plastic anchor kits # R021, # R187 and # T057, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Article R021 consists of 10 plastic wall driller anchors packaged with 10 threaded metal screws. Article R187 consists of 30 plastic wall anchors packaged with 30 metal screws. Article T057 consists of 12 plastic toggle anchors packaged with 12 threaded metal screws. CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed modification of NY H86521 was published on March 20, 2008, in the Customs Bulletin, Volume 42, Number 13. One comment opposing the modification was received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 14, 2008.

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 to 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 Volume 42, No. 13 on March 20, 2008, proposing to modify one ruling letter pertaining to the tariff classification of three metal screw/plastic anchor kits consisting of anchors made of plastic and threaded screws made of metal. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (“NY”) H86521, 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 have advised CBP during this notice period.

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

importations of merchandise subsequent to the effective date of the final decision on this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY H86521 and any other ruling not specifically identified, to reflect the proper classification of the metal screw/plastic anchor kits according to the analysis contained in Headquarters Ruling Letter (“HQ”) H013681, set forth as Attachment A to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

DATED: June 27, 2008

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

Attachment:



DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H013681
June 27, 2008
CLA-2 OT:RR:CTF:TCM H013681 JER
CATEGORY: Classification
TARIFF NO.: 7318.14.1060

RALPH SAUNDERS
DERINGER LOGISTICS CONSULTING GROUP
1 Lincoln Blvd., Suite 225
Rouses Point, NY 12979

RE: Modification of NY H86521; 3926.90.9880, HTSUS: plastic anchor and metal screw set

DEAR MR. SAUNDERS:

On January 8, 2002, U.S. Customs and Border Protection (CBP) issued New York Ruling Letter (“NY”) H86521 to you on behalf of Cobra Anchors Co., Ltd., classifying certain metal screw/plastic anchor sets in heading 3926 of the Harmonized Tariff Schedule of the United States (HTSUS). After reviewing NY H86521, we have found that ruling to be in error as it pertains to article SKU #R021, article SKU #R187 and article SKU #T057.

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 of NY H86521 was published on March 20, 2008, in the Customs Bulletin, Volume 42, Number 13. One comment opposing the proposed modification was received in response to that notice. We will briefly discuss that comment, and our response, in the body of this ruling.

FACTS:

The merchandise at issue includes three screw/anchor sets comprised of varying sizes of plastic anchors and metal screws. These sets are compartmentalized in plastic storage cases which organize matching sizes and quantities of anchor and screw combinations. The items are used to fasten or mount articles to hollow walls (dry wall) or solid walls by inserting a metal screw inside the anchor sleeve to form a mounting unit. Article SKU #R021 consisted of 10 nylon plastic wall driller anchors packaged with 10 metal screws; Article SKU #T057 consisted of 12 nylon toggle anchors packaged with 12 metal screws; Article R187 consisted of 30 plastic wall anchors packaged with 30 metal screws; Article SKU #R211 consisted of 20 lead anchors packaged with 20 metal screws; Article SKU #V133 consisted of 20 steel hollow wall anchors packaged with 20 metal screws. Only R021, R187 and T057 are the topic of this discussion.

ISSUE:

Whether classification of the metal screw/plastic anchor kits is properly under heading 7318, HTSUS, or alternatively, heading 3926, 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.

GRI 3 provides, in pertinent part, that when goods are *prima facie*, classifiable under two or more headings, classification shall be effected by the following: (a) [t]he heading which provides the most specific heading shall be preferred to headings providing a more general description. However, . . . when two or more headings each refer to part only of the items in a set, those headings are to be regarded as equally specific, even if one of them gives a more complete or precise description of the goods. (b) . . . 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 . . . (c) [w]hen goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

The HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of heading 3901 to 3914:
3926.90	Other:
	* * *
3826.90.99	Other
3826.90.9980	Other
7318	Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:

Threaded articles:

7318.11.0000	Coach screws
	* * *
7318.14	Self-tapping screws
7314.14.10	Having shanks or threads with a diameter of less than 6 mm
7318.14.1030	Of stainless steel
7318.14.1060	Other

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. 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.

Explanatory Note X to GRI 3(b) provides in part that:

[t]he 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; . . . (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking. . .

The merchandise at issue clearly satisfies the above criteria of a “set.” Each of the subject kits consist of plastic anchors packaged with metal screws, each individual item being classifiable in two different headings under the HTSUS. If imported separately, the plastic anchor would be classifiable in heading 3926, HTSUS, while the metal screw would fall under heading 7318, HTSUS. The items are sold together to carry out the specific activity of wall mounting or fastening and are put up in a manner suitable for sale directly to users without repacking.

We find that neither component of the subject screw/anchor kit imparts the essential character of the subject merchandise. In hollow wall (i.e. drywall) or solid material (e.g. brick, concrete or plaster) applications, the plastic anchor enhances the capacity of the combined product’s ability to support, mount or fasten articles to a wall surface. Among fasteners generally, there are several types of plastic anchors, Conical Anchors, Split-Ribbed, Expansion Anchors (used in solid wall applications), Hollow-wall anchors (used in drywall applications), Wall Drillers or Threaded Drywall anchors (which have a pointed tip and are threaded) and Plastic Toggle anchors a.k.a. Nylon Wedge anchors (which provides the strongest support for drywall and ceiling mounting). Item R021 is a Wall Driller anchor which has a sharp pointed tip that is capable of piercing drywall surfaces. Similarly, item R187 is a standard Conical or Expansion anchor. Finally, item T057 is a Plastic Toggle anchor which is far less expensive than a Metal Toggle Anchor, but provides twice the amount of strength as a plastic expansion anchor.

According to our research, it is because of the (plastic) anchor that these items are capable of supporting heavily weighted items which are mounted or fastened to a wall. Generally, the plastic anchor expands or grips against

the surface as the screw is tightened.¹ As such, the primary retail lure and uniqueness of the set lie in the plastic anchor.² However, standing alone, the plastic anchor is virtually useless. Without the metal screw, the plastic anchor is unable to mount, fasten or support a wall hanging or other article. In short, the anchor alone cannot carry out the specific activity or function which makes the item a screw/anchor kit.

The Explanatory Note VII to GRI 3(b) states that:

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.

In HQ 085356, dated November 20, 1989, we considered the essential character of a School Supply Kit which consisted of drawing instruments such as a pantograph, stencils and protractors. In that case we found that none of the items imparted the essential character of the kit and that each item appeared to merit equal consideration. Likewise, in HQ 958086, dated May 20, 1996, concerning an Activity Set for Children, we found that while the role of one item predominated over other items, that the activity of the predominant item could not be performed without the presence of the less substantial items. Accordingly, we classified the Activity Set for Children pursuant to GRI 3(c).

GRI 3 (c) provides that: [w]hen goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration. In drywall or solid wall applications, the plastic anchor provides the distinguishing feature of the set. The anchor provides the strength and stability which reinforces the combined unit's ability to support heavily weighted items mounted on drywall or solid wall surfaces. Yet, the role of the anchor could not be accomplished in the absence of the metal screw. Although the effectiveness of the combined unit is greatly reduced without the anchor, standing alone the metal screw has the independent capacity to mount or fasten articles to a wall or ceiling. In that sense, the metal screw imparts a significant feature relative to the use of the goods. Fundamentally, the screw affords the merchandise the capacity to mount or fasten items to walls or other surfaces. As a result, the fundamental role of the metal screw is the equivalent of the role which is imparted by the plastic anchor.

The comment received in response to the March 20, 2008 notice, opposes the modification of NY H86521. The commenter argues that the plastic anchors impart the essential character of the plastic anchor/metal screw sets. Specifically, the commenter notes CBPs statement that the "primary lure and uniqueness of the set lie in the plastic anchor." The commenter further asserts that CBP's statement that the "plastic anchors alone are virtually useless" was in error.

¹ See, *You Can Hang Almost Anything With Wall Anchors*, at www.naturalhandyman.com.

² Similar sets are often referred to as a Screw Assortment Set yet are most often marketed as a Plastic Anchor Kit. See, *Plastic Anchors*, at www.acehardwareoutlet.com; www.HomeDepot.com.

Our decision to classify the plastic anchor/metal screw sets according to GRI 3 (c) is consistent with previous rulings. For example, in HQ 953095, dated April 15, 1993, a case involving the classification of plastic wall anchor sets, CBP determined that neither the metal screws nor the plastic anchors imparted the essential character of the set. The plastic anchors in HQ 953095 were substantially similar to the subject plastic anchors. They were threaded anchors which expanded as the tapping screws were screwed in. In HQ 953095, CBP determined that the function of both the plastic anchor and the metal screw were essential to the overall and combined purpose of the plastic anchor/metal screw set.

Next we consider the relevance of the plastic anchors independent of the metal screws. It is argued that certain plastic anchors may carry out the anchoring function without the presence of the metal screw. However, we are not able to locate any rulings nor did the commenter offer any evidence which would support this position. Instead, we find that while the plastic anchors have a significant role in anchoring objects to a wall or surface, that standing alone, the primary purpose of the plastic anchor/metal screw set could not be performed by the plastic anchor. For example, the winged shaped plastic toggle anchor which is unique in its design and substantial in construction could not by itself attach or mount an object to a wall or surface. While we do not find the subject plastic anchors to be without any function or relevance, we do find however, that both the plastic anchor and the metal screws are equally valuable to performing the primary purpose of the merchandise.

In *Structural Industries, Inc. v. United States*, 360 F. Supp. 2d 1330, 1336 (Ct. Int'l Trade, 2005), the Court noted that the essential character of an article is "that which is indispensable to the structure, core or condition of the article, i.e. what it is." The Court further explained that the essential character of an item is imparted by the item or component which is indispensable to carrying out the item's primary objective. *Id.* at 1338. Similarly, the decision in *Better Home Plastics Corp. v. United States*, 20 CIT 221; 916 F. Supp. 1265 (Ct. Int'l Trade, 1996), found that the essential character is not necessarily the component which creates the item's "retail lure." In *Better Home*, a textile shower curtain which provided the desirable decorative characteristics and thus created the retail lure for the shower curtain set was not the item which imparted the essential character. *Id.* at 1267-1269. Instead, the Court determined that it was the inner plastic liner which imparted the essential character. The Court reasoned that it was the inner plastic liner that was indispensable to prevent water from escaping from the shower. *id.* at 1269.

In the instant, case both items are indispensable to performing the set's primary objective. The metal screw has the capacity to attach, affix or anchor an object to a surface, while the plastic anchors under discussion could not. Yet the use of the plastic anchor is what increases the item's capacity to support heavily weighted items mounted on drywall or solid surfaces. Accordingly, the items are equally specific and warrant equal consideration.

As such, we find that neither the plastic anchor nor the metal screw impart the essential character of the set. Therefore, we classify the set according to GRI 3 (c). See HQ 953095, NY I83699, dated June 25, 2002, NY I84859, dated August 8, 2002 and I8799, dated September 26, 2002 (these rulings reflect CBP's consistent classification of substantially similar screw/anchor kits under heading 7318, HTSUS). We find that the correct classifi-

cation of R021, R187 and T057 is under heading 7318, HTSUS, as, “[s]crews, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles of iron or steel.”

HOLDING:

By application of GRI 3(c), R021, R187 and T057 are classified in heading 7318, HTSUS. Specifically, they are provided for in subheading 7318.14.1060, HTSUS, which provides for: Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles. Of iron or steel: Self-tapping screws: Having shanks or threads with a diameter of less than 6 mm, Of stainless steel, Other. The column one, general rate of duty is 6.2% percent *ad valorem*.

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

EFFECT ON OTHER RULINGS:

NY H86521, dated January 8, 2002, is hereby modified.

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