

# U.S. Customs and Border Protection

## **MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN CARRYING CASES**

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

**ACTION:** Modification of a ruling letter and revocation of treatment relating to the tariff classification of certain carrying cases.

**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 (CPB) is modifying a ruling letter concerning the tariff classification of certain carrying cases. CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of proposed action was published on November 2, 2011, in Volume 45, Number 45, of the *Customs Bulletin*. CBP received no comments.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 5, 2012.

**FOR FURTHER INFORMATION CONTACT:** Albena Peters, Regulations and Rulings: (202) 325–0321.

### **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, notice proposing to modify one ruling letter pertaining to the tariff classification of certain carrying cases was published in the November 2, 2011 *Customs Bulletin*, Volume 45, Number 45. No comments were received.

As stated in the proposed notice, this modification will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a 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 the final decision on this notice.

In NY M87216, CBP determined, in relevant part, that the "Intellect Legend Case P/N 27133" is classified under subheading 4202.92.30, Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for "travel, sports and similar bags." Since the issuance of that ruling, CBP has reviewed the classification of the carrying cases and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NY M87216 and is revoking any other ruling not specifically identified, to reflect the tariff classification of the carrying bags according to the analysis contained in Headquarters Ruling Letter (HQ) H035447, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: December 7, 2011

IEVA K. O'ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H035447

December 7, 2011

CLA-2 OT:RR:CTF:TCM H035447 AP

CATEGORY: Classification

TARIFF NO.: 4202.92.30; 4202.92.90

Ms. FARIHA M. MASUD

ATTORNEY-IN-FACT

IMPORT BROKERAGE COMPLIANCE

PHOENIX INTERNATIONAL FREIGHT SERVICES, LTD.

CHICAGO BRANCH

855 IL ROUTE 83

BENSENVILLE, IL 60106-1219

RE: Reconsideration of NY M87216; Classification of carrying cases

DEAR Ms. MASUD:

This is in response to your request, dated June 27, 2008, made on behalf of S.I. Jacobson Mfg. Co., for reconsideration of New York Ruling Letter (“NY”) M87216, issued by U.S. Customs and Border Protection (“CBP”) on

November 15, 2006. We have reviewed NY M87216, and find it to be in error with respect to the “Intellect Legend Case P/N 27133.”

In NY M87216, CBP classified two different models of carrying cases used to transport electrotherapy equipment under subheading 4202.92.30, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for “travel, sports and similar bags.”

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify NY M87216 was published on November 2, 2011, in Volume 45, Number 45, of the *Customs Bulletin*. CBP received no comments in response to this notice.

**FACTS:**

In NY M87216, the merchandise is described as follows:

The item you refer to as “Intellect Legend Case P/N 27133,” is a travel bag constructed with an outer surface of man-made textile material. The bag is designed to provide storage, protection, organization, and portability to medical equipment, accessories, and personal effects during travel. It measures approximately 13” (W) x 16” (H) x 10” (D). It features a three-sided zippered opening, a top carrying handle, and a removable shoulder strap.

The item you refer to as “Intellect Transport Case P/N 27467” is a travel bag constructed with an outer surface of man-made textile material. The bag is designed to provide storage, protection, organization, and portability to medical equipment, accessories, and personal effects during travel. It measures approximately 17” (W) x 12” (H) x 14” (D). It features a hook-and-loop secured flap closure, a top carrying handle, an adjustable shoulder strap, and several interior pockets.

**ISSUE:**

Whether the carrying cases are classified in subheading 4202.92.30, HTSUS, as “travel, sports and similar bags,” or in subheading 4202.92.90, HTSUS as specialty cases.

Whether the carrying cases are articles “specially designed or adapted” for the handicapped within the meaning of the Nairobi Protocol, Annex E, to the Florence Agreement, as codified in the Education, Scientific, and Cultural Materials Act of 1982, and therefore eligible for duty-free treatment under subheading 9817.00.96, HTSUS.

**LAW AND ANALYSIS:**

Classification under the HTSUS is governed by 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. The HTSUS provisions under consideration in this case are as follows:

**4202**            **Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:**

Other:

4202.92            With outer surface of sheeting of plastic or of textile materials:

Travel, sports and similar bags:

With outer surface of textile materials:

\*                    \*                    \*

**4202.92.30**            Other .....

\*                    \*                    \*

Other:

4202.92.90

Other .....

**Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons; parts and accessories (except parts and accessories of braces and artificial limb prosthetics) that are specially designed or adapted for use in the foregoing articles:**

Articles for the blind:

\* \* \*

9817.00.96

Other .....

There is no dispute that the instant merchandise is classified in subheading 4202.92, HTSUS. At issue is the proper 8-digit national tariff rate level. GRI 6 provides that for legal purposes, classification of goods in the subheading of a heading shall be determined according to the terms of those subheadings and any related subheading notes, and *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level.

The additional U.S. notes become applicable at the 8-digit level. Concerning travel, sports and similar bags, Additional U.S. Note 1 to Chapter 42, HTSUS, notes that the expression “travel, sports and similar bags” means “goods, other than those falling in subheadings 4202.11 through 4202.39, HTSUS of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading, but does not include binocular cases, camera cases, musical instruments, bottle cases and similar containers.”

You assert that the correct classification is subheading 4202.92.90, HTSUS, which provides for other than “travel, sports and similar bags.” In support of your argument you state that the carrying cases are designed to carry specific medical equipment, with compartments specially designed to hold the various parts of the medical equipment. You claim that the articles are not designed to carry clothes or other personal effects.

In HQ 957465, dated January 4, 1995, CBP determined that a carrying bag, which was imported with a device used in the treatment of a medical condition was not a specialty bag normally sold with the medical equipment. It was not shaped to the form of the medical equipment and its pockets could be used to hold personal effects. Moreover, the bag had the appearance and characteristics of an ordinary travel bag and was sold individually at retail.

In contrast, in HQ 962132, dated October 26, 2000, CBP concluded that carrying cases specifically and exclusively designed to hold blood glucose monitoring system had the same characteristics and functions as other specialty cases such as musical instrument cases, camera cases, binocular cases

and compact disk cases. The carrying case was double-lined with polyurethane to provide additional protection for the blood glucose monitoring system and had a sewn-on cloth label with the system's logo prominently displayed in stylized lettering. The cases were not available for purchase separately from the diabetic monitoring system. Similarly in HQ 964615 dated August 21, 2001, CBP concluded that the carrying cases, which were designed with specially fitted compartments to hold and carry small medical supplies needed by diabetics, were classified in subheading 4202.92.90, HTSUS, as "other" containers or cases and were excluded from classification as "travel, sports and similar bags" by operation of Additional U.S. Note 1 to Chapter 42, HTSUS.

In the instant case, we agree that the "Intellect Legend Case P/N 27133" is specially molded to the shape of the electrotherapy system it is designed to carry. The interior of the case is padded on all sides to protect the system during transport. The padding and the sleeve cannot be removed without destroying the case. The three-sided zippered opening is designed to allow the user to use the medical equipment without removing it from the bag. The interior pockets are designed for the system's accessories. This case has the same characteristics and functions as other specialty cases such as medical instrument cases, camera cases, binocular cases and compact disk cases. Like the carrying cases in HQ 964615 dated August 21, 2001, and in HQ 962132, dated October 26, 2000, the "Intellect Legend Case P/N 27133" carrying case is exclusively designed to hold and carry specific medical equipment. It is excluded from classification as a travel, sports and similar bag by operation of Additional U.S. Note 1 to Chapter 42, HTSUS. Therefore, it is properly classified under subheading 4202.92.90, HTSUS, as a specialty case.

Regarding the "Intellect Transport Case P/N 27467," we have no doubt that the carrying case is used to carry medical equipment. However, it is designed to carry personal effects as well. It is not specially shaped or fitted to hold the medical equipment. The carrying case has the appearance and characteristics of an ordinary travel bag. It is in the nature of a travel bag for carrying medical equipment and personal effects, and a reasonable consumer may purchase it to carry goods other than medical equipment. This is not a carrying case that has little or no use apart from its content. It is used to transport personal effects and medical equipment during travel and as such is classified in subheading 4202.92.30, HTSUS, as a travel, sports and similar bag.

We next turn to the question whether the carrying cases are specially designed for the handicapped and as such are classified duty-free in subheading 9817.00.96, HTSUS. You claim that the carrying cases are used to carry electrotherapy systems designed to relieve pain and promote healing in those suffering from musculoskeletal disorders ("MSDs"), which can lead to a permanent or chronic physical impairment if treatment is not satisfactory. The Agreement on the Importation of Educational, Scientific and Cultural Materials, 17 U.S.T. 1835, TIAS 6129, known as the Florence Agreement provides for the duty-free treatment of certain materials including scientific instruments and apparatus and articles for the blind. The Nairobi Protocol to the Florence Agreement on the Importation of Educational, Scientific, and Cultural Materials Act of 1982 expanded the scope of the Florence Agreement to provide duty free treatment for certain articles for the use or benefit of the handicapped. The 97th Congress passed Pub. L. 97-446 to ratify the Nairobi Protocol in the United States.

Subheading 9817.00.96, HTSUS covers certain articles specifically designed or adapted for the use or benefit of other physically or mentally handicapped persons. U.S. Note 4(b), subchapter XVII, Chapter 98, HTSUS, states that subheading 9817.00.96, HTSUS does not cover “(i) articles for acute or transient disability.” U.S. Note 4(a), subchapter XVII, Chapter 98, HTSUS, provides that the term “*blind or other physically or mentally handicapped persons*” includes any person suffering from a **permanent or chronic** physical or mental impairment, which substantially limits one or more major life activities, such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, or working.” (emphasis added).

The product at issue has to be “specially designed or adapted” for the use or benefit of handicapped persons within the meaning of the Nairobi Protocol. CBP set forth factors it would consider in making this determination. These factors include: (1) physical properties of the article itself (*e.g.*, whether the article is easily distinguishable in design, form and use from articles useful to non-handicapped persons); (2) presence of any characteristics that create a substantial probability of use by the chronically handicapped so that the article is easily distinguishable from articles useful to the general public and any use thereof by the general public is so improbable that it would be fugitive; (3) importation by manufacturers or distributors recognized or proven to be involved in this class or kind of articles for the handicapped; (4) sale in specialty stores that serve handicapped individuals; and (5) indication at the time of importation that the article is for the handicapped. HQ H074876 dated November 19, 2009. These factors are weighed against each other to determine whether an article is specially designed or adapted for the handicapped. HQ H055815 dated May 26, 2010.

In this case, the goods at issue consist of two different models of carrying cases. The “Intellect Transport Case P/N 27467” is a product that would be used by the general public and by persons who have no disability. It is not specially shaped or fitted to hold electrotherapy equipment and has the appearance of an ordinary travel bag. It is available for purchase on the Internet and is not limited to specialty stores that serve the handicapped. The description of the article does not indicate that it is for the use or benefit of handicapped individuals. Therefore, we conclude that the “Intellect Transport Case P/N 27467” was not specially designed or adapted for the use of handicapped persons.

The “Intellect Legend Case P/N 27133” is specially molded to the shape of the electrotherapy unit it is designed to transport. Its interior is padded and the three-sided zippered opening allows use the electrotherapy unit without removing it from the bag. The electrotherapy unit is routinely used by medical professionals in treating patients whose impairment is “acute or transient disability” such as a moderate sports injury. Unlike in N095267 dated March 18, 2010, and NY J83008 dated April 10, 2003, this carrying case is used to transport electrotherapy equipment that is not specially designed and adapted for the benefit of persons suffering from a permanent or chronic physical impairment such as sleep apnea or diabetes. The electrotherapy equipment that the case transports is designed to stimulate injured joints and muscles to activate the body’s natural processes for relieving pain, building strength, and promoting healing in those suffering from MSDs. While permanent disability is possible in chronic cases if treatment

is unsatisfactory, the electrotherapy equipment is not designed exclusively for the use of handicapped persons. Therefore, the “Intellect Legend Case P/N 27133” is not specially designed or adapted to carry medical equipment that is specially designed and adapted for the use of handicapped persons.

In addition, there is no evidence that the “Intellect Legend Case P/N 27133” is offered for sale in specialty stores that solely serve handicapped individuals, that it is imported by manufacturers/distributors recognized to be involved in this kind of articles for the handicapped, and that it was described as an article for the handicapped at the time of importation. This carrying case has not been described and/or marketed as a product for the handicapped. Thus, the “Intellect Legend Case P/N 27133” is within the exception for acute and transient disabilities and is not designed for the needs of persons suffering from permanent or chronic physical impairment.

Accordingly, neither carrying case is classified duty free in subheading 9817.00.96, HTSUS, as equipment specially designed for the handicapped.

#### **HOLDING:**

Pursuant to GRI 6, the “Intellect Legend Case P/N 27133” is classifiable under subheading 4202.92.90, HTSUS, which covers specialty cases. The column one, general rate of duty is 17.6% *ad valorem*. The textile quota category is 670.

The carrying cases are not eligible for duty-free treatment pursuant to subheading 9817.00.96, HTSUS.

Duty rates and quota categories 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 Internet at [www.usitc.gov](http://www.usitc.gov).

#### **EFFECT ON OTHER RULINGS:**

NY M87216, dated November 15, 2006, is hereby MODIFIED.

*Sincerely,*

IEVA K. O’ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

### **PROPOSED REVOCATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CHILDREN’S DRESS-UP VESTS**

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

**ACTION:** Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the tariff classification of children’s dress-up vests.

**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 Modern-

ization) 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 proposing to revoke a ruling concerning the tariff classification of children’s dress-up vests under the Harmonized Tariff Schedule of the United States (“HTSUS”). Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before February 3, 2012.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 5th floor, 799 9th Street N.W., Washington, D.C., 20229–1179, and may be inspected during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0188.

**FOR FURTHER INFORMATION CONTACT:** Robert Shervette, Office of International Trade, Tariff Classification and Marking Branch, at (202) 325–0274.

**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”), become 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, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of children's dress-up vests. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter ("NY") N097116, dated April 9, 2010, set forth as "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 is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transaction 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 of this notice.

In NY N097116, CBP classified children's dress-up vests under heading 6217, HTSUS, which provides for: "[o]ther made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212." Upon our review of NY N097116, we have determined that the merchandise described in that ruling is properly classified under heading 9505, HTSUS, which provides for: "[f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke NY N097116, and to revoke or modify any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter ("HQ") H105997, 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: December 1, 2011

IEVA K. O'ROURKE  
*for*  
MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N097116

April 9, 2010

CLA-2-62:OT:RR:NC:TA:353

CATEGORY: Classification

TARIFF NO.: 6217.10.9530

MR. RANDY GREEN  
TARGET CUSTOMS BROKERS, INC.  
7000 TARGET PARKWAY NORTH  
NCD-0456  
BROOKLYN PARK, MN 55445

RE: The tariff classification of costume vests from China.

DEAR MR. GREEN:

In your letter dated March 3, 2010, on behalf of Target Corporation, you requested a tariff classification ruling. The sample will be returned to you.

The submitted sample, Item DPCI 234-24-1774, consists of four costume vests constructed of 100 percent nonwoven polypropylene fabric. The costume vest distinguishes the wearer as a member of the police, fire rescue, army, or construction crew and is worn over clothing for purposes of identification. The vest is pulled over the head and features a rounded neckline, oversized armholes, open sides with a hook and loop strip closure, and hemmed edges.

You state that you believe the costume is properly classified under heading 9503 as a “dress up article.” Costumes are considered “fancy dress.” The Court of Appeals ruled on the classification of costumes in its decision in *Rubie's Costume Co. v. United States*, slip op 02-1373 (Fed. Cir. Aug. 1, 2003). The decision stated that all flimsy, non-durable textile costumes that are not ordinary articles of apparel are classified under 9505.90.6000 (flimsy); all textile costumes that do not meet flimsy, non-durable standards (well made), or are ordinary articles of apparel are classified in chapters 61 or 62. The overall amount of finishing is such that the articles are neither flimsy in nature or construction, nor lacking in durability; your costumes are well made.

The applicable subheading for the Item DPCI 234-24-1774, police, fire rescue, army and construction vests, will be 6217.10.9530, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Other made up clothing accessories... other than those of heading 6212: Accessories: Other: Other, Of man-made fibers.” The rate of duty will be 14.6 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kenneth Reidlinger at (646) 733-3053.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H105997  
CLA-2 OT:RR:CTF:TCM H105997 RES  
CATEGORY: Classification  
TARIFF NO.: 9505.90.60

MS. JENNIFER S. OKERLUND  
SENIOR CORPORATE COUNSEL  
TARGET CUSTOMS BROKERS, INC.  
7000 TARGET PARKWAY NORTH  
NCD-0456  
BROOKLYN PARK, MN 55445

RE: Revocation of New York Ruling N097116, dated April 9, 2010; classification of children's dress-up vests from China

DEAR MS. OKERLUND:

This is in response to your letter dated May 11, 2010, on behalf of Target Corporation ("Target") requesting reconsideration of New York Ruling Letter ("NY") N097116 issued on April 9, 2010, regarding the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of children's dress-up vests. The merchandise in NY N097116 was classified under heading 6217, HTSUS. We have reviewed NY N097116 and determined it is incorrect.

**FACTS:**

The subject vests are composed of 100% nonwoven polypropylene fabric and are worn over clothing. They have the dimensions of 16.5" x 19.25", are pulled over the head, feature a rounded neckline, have oversized armholes with open sides and a hook/loop velcro strip closure, and hemmed edges. The side and bottom seams feature a 1/3" folded hem that contains 8-stitches per inch. The vests come in four different styles that distinguish the wearer as a member of a police, fire rescue, army, or construction crew. Each style is created by the vests' coloring and by simple screen-printing of designs and words that identify what the wearer is dressed up as. The vests retail in the importer's stores for \$1.00.

Target submitted a request on March 3, 2010, to CBP for a binding ruling on the classification of the children's dress-up vests at issue here. CBP classified the vests in NY N097116 under heading 6217, HTSUS, as other clothing accessories. On May 11, 2010, Target submitted to CBP a request for reconsideration of NY N097116. The importer asserts that the vests are properly classified under heading 9505, HTSUS, as festive articles.

**ISSUE:**

Whether the children's dress-up vests at issue are classified under heading 6217, HTSUS, as other clothing accessories or under heading 9505, HTSUS, as festive, carnival or other entertainment articles?

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be "determined according to the terms of the headings and any relative section or chapter notes." In the event that the goods cannot be classified

solely on the basis of GRI 1 and if the headings and legal notes do not otherwise require, the remaining GRI 2 through 6 may be applied in order.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the HTSUS at the international level, 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 HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS headings under consideration in this case are as follows:

- 6217                    Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212:
  
- 9505                    Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:

The two classifications under consideration here fall under chapters 62 and 95 of the HTSUS. Chapter 62, which is part of Section XI (“Textiles and Textile Articles”), covers “Articles of Apparel and Clothing Accessories, not Knitted or Crocheted.” Note 1(t) to Section XI states that the section does not cover “Articles of chapter 95 (for example, toys, games, sports requisites; parts and nets).” Chapter 95 covers “Toys, Games and Sports Equipment; Parts and Accessories Thereof.” Note 1(e) to Chapter 95 states that the chapter does not cover “Sports clothing or fancy dress, of textiles, of chapter 61 or 62.” The ENs for heading 62.17 state in pertinent part:

This heading covers made up textile clothing accessories, **other than** knitted or crocheted, not specified or included in other headings of this Chapter or elsewhere in the Nomenclature. The heading also covers parts of garments or of clothing accessories, not knitted or crocheted, **other than** parts of articles of **heading 62.12** .

\*                    \*                    \*                    \*                    \*

And, the applicable part of the ENs for 95.05 provides:

This heading covers:

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

\*                    \*                    \*

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

\*                    \*                    \*                    \*                    \*

CBP, in previous rulings regarding textile costume articles, has consistently interpreted the legal notes and ENs to mean that such articles are

classifiable under heading 9505 as “festive articles” if the textile costumes: have a flimsy nature and construction; are lacking in durability; and are generally recognized as not being normal articles of apparel.

In Headquarters Ruling (“HQ”) 961447, dated July 22, 1998, in response to a domestic interested party petition concerning the classification of certain textile costumes, CBP affirmed the classification of five textile costumes in HQ 959545, dated June 2, 1997. In HQ 961447, CBP classified four textiles costumes under heading 9505, HTSUS, as festive articles, and a fifth textile costume under heading 6209, HTSUS, as wearing apparel. CBP cited the ENs to 95.05 as support for assessing the durability of textile costumes in determining whether such articles are classifiable in Chapter 95. CBP noted that characteristics weighing in favor of non-durability and flimsy construction of textile costumes include styling features such as: a simple pull-on type of garment; the lack of zippers, inset panels, darts, or hoops; and edges of a garment that have been left raw and exposed, i.e. not hemmed. The four textile costumes at issue in HQ 961447 that were found to be festive articles had these styling features. While, in regard to the fifth textile costume at issue in HQ 961447 that CBP determined not to be classifiable as a festive article, CBP cited the type of sewing used to construct it, the durable bias tape used to cap the ruffled collar, wrists, and ankles, the lack of raw and exposed edges, and the substantiality of the sewing on the elastic at the wrist and ankles as styling features supporting that the article was well-constructed and durable. In addition, other rulings also cite examples of features that are indicative of substantial and durable garments, such as zipper closures, a fitted bodice with darts, a clown suit with a fabric encased wire hoop, petal shaped panels sewn into a waistline, and sheer/decorative panels sewn into the seams of costumes. See HQ 957948 and 957952, both dated May 7 1996, HQ H046715, dated March 16, 2009, and HQ H08260, dated June 3, 2009.

Furthermore, the Court of Appeals for the Federal Circuit (“CAFC”) affirmed CBP’s analytical approach in regard to the classification of textile costumes as festive articles. In *Rubie’s Costume Company v. United States*, 337 F.3d 1350 (Fed. Cir. 2003), the CAFC affirmed CBP’s analysis and classification of textile costumes in HQ 961447. The CAFC concluded that “textile costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel, are classifiable as ‘festive articles.’” *Rubie’s Costume Co.*, 337 F.3d at 1360.

In addition, the features and characteristics used to distinguish between textile costumes classifiable as “festive articles” of Chapter 95, HTSUS, and “fancy dress” of Chapters 61 or 62, HTSUS, has been set forth in the CBP Informed Compliance Publication (ICP), *What Every Member of the Trade Community Should Know About: Textile Costumes under the HTSUS*, August 2006 (“Textile Costumes under the HTSUS”). As noted in this publication, CBP generally considers four areas in making classification determinations for textile costumes: “styling”, “construction”, “finishing touches”, and “embellishments”. With regard to styling, the examples provided in the ICP note that a “well-made” article of Chapter 61 or 62, HTSUSA, would have two layers of fabric, pleats, and facing fabrics (two or more layers of fabric/linings). Examples of well-made construction elements include an assessment of the neckline and seams. The ICP notes that costumes that are

*well-made* may have embroidery and trimmings, and appliqués that have been sewn to the fabric.

From previous CBP rulings, the court in *Rubie's Costume Co.*, and the ICP, the pertinent factors used in analyzing whether a textile costume is of a flimsy nature and non-durable construction include: styling, construction, finishing touches, and embellishments. Although not explicitly enumerated, but implied, are other factors such as comparison of an article to other analogous durable and non-durable items, cleaning durability, disposability, *etc.* Applying these factors, we can determine whether children's dress-up vests are festive articles. A physical examination of samples of the children's dress-up vests at issue here in light of these factors is as follows:

*Styling:* There are no zippers, pockets, buttons, inset panels, intricate stitching, or other tailoring elements on the vests at issue. The vests simply consist of a single layer of woven fabric on the front and back panel.

*Construction:* The vests are made up of two parts of nonwoven material which are stitched together at the shoulders with a single basic straight stitch that appears to be fairly sturdy. The neck and the arm holes are sewn with a visible overlock stitching, of which the loops of the stitching are loose enough that they can be pulled on and loosened with one's fingers or when in use, can easily be snagged on something and ripped or pulled apart. Even though there are no raw edges in the neck or arm holes, the looseness and visibility of the overlock stitching, according to the ICP, are indicative of flimsy construction. Overall, the construction of the vests is a factor that weighs in favor of flimsy construction and non-durability.

*Finishing Touches:* There are no raw or exposed edges in the vests' construction. The side and bottom edges of the vest have a 1/3 inch folded hem with a single basic stitch that is securely sewn. Similar to the ends of the stitches with the shoulder stitches, the ends of the folded hem are loose and not tightly secured. In addition, the vests lack any closures that are reflective of being well-made, such as zippers or buttons with button holes. Instead, the vests have small velcro tabs that act as closures. Such small closures are supportive of a flimsy construction and lack of durability. Finally, the tension of the overlock stitching on the neck and the arm holes is loosely sewn. Overall, the vests have features that are indicative of flimsy construction such as loose ends of the stitching, small velcro tab closures, and the looseness of the overlock stitching.

*Embellishments:* Two of the sample dress-up vests have screen-printed stripes on them. One dress-up vest labeled as "construction" on the front has two orange-yellow stripes perpendicular to a single horizontal stripe on both the front and back of the vest. A second dress-up vest labeled as "fire rescue" on the front has a single yellow and silver stripe on the front and back of the vest.

Work safety vests in general have styling and construction features, which are considered well-made, such as a separate piece of trim that is sewn

around all the edges of safety vests with sturdy stitching, a front opening with a substantial velcro or zippered closure, high visibility fabric, strips of highly reflective material sewn onto the vests, etc. In comparison, the children's dress up vests lack the trim around the edges and have overlock stitching instead and have loose threading along the end of the seam stitches, while the stitching of the conventional safety vests is tightly secured at the ends.

Therefore, given a consideration of the instant garment as a whole, along with its styling, construction, finishing touches, and embellishments, CBP finds that the vests are of a flimsy and non-durable construction. Hence, the children's dress-up vests are classifiable as "festive articles" in heading 9505, HTSUS.

Therefore, upon reconsideration CBP has determined that the classification in NY N097116 of the children's dress-up vests in heading 6217, HTSUS, is incorrect. The children's dress-up vests are properly classified in heading 9505, HTSUS, as "[f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof."

**HOLDING:**

Pursuant to GRI 1, the children's dress-up vests are classified under sub-heading 9505.90.6000, HTSUSA, as "[f]estive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: [o]ther: [o]ther." Articles classified under this subheading are duty free.

**EFFECT ON OTHER RULINGS:**

NY N097116, dated April 9, 2010, is revoked.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

**PROPOSED MODIFICATION OF RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE NAFTA ELIGIBILITY AND COUNTRY OF ORIGIN OF  
THE PRODUCT "COCO PEAT"**

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

**ACTION:** Notice of proposed modification of ruling letter and proposed modification of treatment relating to the NAFTA eligibility and country of origin of the product "CoCo Peat".

**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) proposes to modify one ruling letter relating to the NAFTA eligibility and country

of origin of the product “CoCo Peat”. CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before February 3, 2012.

**ADDRESSES:** Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. (Mint Annex), Washington, D.C. 20229. Submitted comments may be inspected at the above-identified address during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Aaron Marx, Tariff Classification and Marking Branch: (202) 325-0195

#### **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, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP

intends to modify one ruling letter pertaining to the NAFTA eligibility and country of origin of the product “CoCo Peat”. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N054636, dated March 19, 2009 (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.*, 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, as amended (19 U.S.C. §1625 (c)(2)), CBP proposes 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 notice of this proposed action.

In NY N054636, CBP determined that the product known as “CoCo Peat” was classified in heading 1404, HTSUS, specifically under subheading 1404.90.90, HTSUS, which provides for “Vegetable products not elsewhere specified or included: Other: Other: Other”. Furthermore, CBP determined that the subject merchandise was not NAFTA originating, and that its country of origin was Sri Lanka. It is now CBP’s position that the subject merchandise is “waste and scrap” within the meaning of both GN 12(n)(ix)(B), HTSUS, and 19 C.F.R. §102.11(g)(9)(ii), that Canada is its country of origin under 19 C.F.R. §102.11(a)(i), and that it is eligible for NAFTA preferential treatment under GN 12(a)(i), HTSUS.

Pursuant to 19 U.S.C. §1625(c)(1), CBP proposes to modify NY N054636, and to revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the “CoCo Peat” according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H061739, 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: December 20, 2011

IEVA K. O'ROURKE  
*for*  
MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N054636

March 19, 2009

CLA-2-14:OT:RR:NC:N2:235

CATEGORY: Classification

TARIFF NO.: 1404.90.9090

MR. ROBERT GAYDO  
DERINGER LOGISTICS CONSULTING GROUP  
6930 METROPLEX DRIVE  
ROMULUS, MI 48174

RE: The tariff classification of Coco Peat from Canada

DEAR MR. GAYDO:

In your letter dated March 11, 2009, on behalf of Envirotex, you requested a tariff classification ruling. In your letter you also request a determination on the Country of Origin for the product. The samples which you submitted were examined and disposed of. Information received from you and the Import Specialist in Detroit, indicate that you have had discussions with the Department of Agriculture regarding fumigation requirements for this product. We will not address that issue in this ruling and suggest you contact the Department of Agriculture for a written ruling on that issue.

The subject product, "Coco Peat" is comprised of used coconut shell coir pith. The pith is originally imported into Canada from Sri Lanka. The coconut shell coir pith is in the form of condensed blocks when imported into Canada. You indicate that the product has phytosanitary certificates and that the containers are fumigated prior to export from Sri Lanka. The coconut shell coir pith is used in Canada as a growth medium for hydroponic plants. After the growing season the plants are removed and the bags of coconut shell coir pith are collected, filtered and any plastic bags and plant pieces are removed. The coconut shell coir pith is then sold and exported to the United States for use in potting soil. There is no chemical, structural or physical change in the coir pith between the export from Sri Lanka, and the ultimate importation into the United States. No change in classification or substantial transformation occurs.

The applicable subheading for the "Coco Peat" will be 1404.90.9090, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Vegetable products not elsewhere specified or included: Other: Other... Other. The rate of duty will be Free.

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

Your letter also requests a determination of Country of Origin for the Coco Peat.

In your letter you suggest that you believe the country of origin should be determined based on substantial transformation, de minimis value, or divestiture considerations of the imported product.

General Note 12(b), HTSUS, sets forth the criteria for determining whether a good is originating under NAFTA. General Note 12(b), HTSUS, (19 U.S.C. § 1202) states, in pertinent part, that:

For the purposes of this note, goods imported into the customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if--

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

(ii) they have been transformed in the territory of Canada, Mexico and/or the United States so that--

(A) except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, ...

The marking statute, section 304, 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 U.S. 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 U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The country of origin marking requirements for a “good of a NAFTA country” are also determined in accordance with Annex 311 of the North American Free Trade Agreement (“NAFTA”), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Part 102 of the regulations, sets forth the “NAFTA Marking Rules” for purposes of determining whether a good is a good of a NAFTA country for marking purposes. Section 102.11 of the regulations, sets forth the required hierarchy for determining country of origin for marking purposes.

Section 134.1(j) of the regulations, provides that the “NAFTA Marking Rules” are the rules promulgated for purposes of determining whether a good is a good of a NAFTA country. Section 134.1(g) of the regulations, defines a “good of a NAFTA country” as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules (Section 134.45(a) (2) of the regulations).

Based on the facts provided, the “Coco Peat” described above does not qualify for NAFTA preferential treatment, because the product fails to meet the requirements of HTSUS General Note 12(b) and 12(t)/14, noting GN 12(f)(v). The product’s Country of Origin cannot be determined by NAFTA regulations cited above.

Section 134.1(b) of the regulations, defines “country of origin” as the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within the meaning of Part 134. A

substantial transformation occurs when an article emerges from a manufacturing process with a name, character, and use that differs from the original material subjected to the processing.

The tariff classification of the imported product does not change between export from Sri Lanka and importation into the United States. The article being imported into the United States is essentially the same product as exported from Sri Lanka. As no substantial transformation has occurred, and the product does not meet the requirements for Tariff Shift as set out in General Note 12(b), we find that based on the regulations cited above the Cocoa Peat is a product of Sri Lanka for country of origin and marking purposes.

These goods may be subject to regulations or restrictions administered by the U.S. Department of Agriculture, Animal and Plant Health Division (APHIS), and Agricultural Marketing Service (AMS). You may contact these agencies regarding possible applicable regulations at the following locations:

U.S. Department of Agriculture APHIS Plant Protection and Quarantine  
Permit Unit 4700 River Road, Unit 136 Riverdale, MD 20737-1236 Telephone number: 877-770-5990

Marketing Order Administration Branch Fruit and Vegetable Programs  
USDA AMS 4700 River Road, Unit 155, Suite 5D03 Riverdale Park, MD  
20737-1227 Telephone: (301) 734-5246 FAX: (301) 734-5275

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 Paul Hodgkiss at (646) 733-3046.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H061739  
CLA-2 OT:RR:CTF:TCM H061739 AMM  
CATEGORY: Classification  
TARIFF NO.: 1404.90.90

MR. STEPHEN LEAHY  
LAW OFFICE OF STEPHEN LEAHY  
175 DERBY ST., SUITE 9  
HINGHAM, MA 02043

RE: Modification of New York Ruling Letter N054636; Classification of CoCo Peat; NAFTA Eligibility and Country of Origin of CoCo Peat

DEAR MR. LEAHY,

This is in response to your letter, dated May 14, 2009, in which you requested a reconsideration of New York Ruling Letter (NY) N054636, dated March 19, 2009, which was issued to your client, Envirotex Products, Inc. (Envirotex), for the classification, NAFTA eligibility, and country of origin determination of the product identified as “CoCo Peat,” under the Harmonized Tariff Schedule of the United States (HTSUS). In that ruling, Customs and Border Protection (CBP) classified the CoCo Peat under heading 1404, HTSUS, which provides for “Vegetable products not elsewhere specified or included”. Furthermore, CBP determined that the product was not eligible for NAFTA preferential treatment, and that the country of origin was Sri Lanka. We have reviewed NY N054636 and found it to be incorrect with respect to the NAFTA eligibility determination and country of origin. For the reasons set forth below, we intend to modify that ruling.

**FACTS:**

The merchandise in question, identified as “CoCo Peat,” is comprised of used coconut shell coir pith. “Coir” is the outside layer of husk that surrounds the outside shell of the coconut. “Coir pith” is the cork-like substance between the fibers. It has been widely recognized as a superior growing medium for tomatoes, roses, and other crops.

The coir pith is originally imported into Canada from Sri Lanka in plastic bags, where it is used for the hydroponic growing of vegetables in Canada. You state that the coir pith degrades (converts to smaller granules) during the single season crop cycle, such that poor performance would be expected if the grow bag was used for more than one season. You further state that, after one season of use, the coir pith is no longer suitable for use in the hydroponic growing of vegetables, and is normally discarded by the greenhouses.

As a service to the growers, Envirotex collects the used coir pith directly from the greenhouses and ships it to their Canadian facility. At this location, the used coir pith is transformed into the product identified as CoCo Peat. The used coir pith is subjected to a process which removes the plastic growing bags, other bits of plastic, and plant residue. It is then run through a number of screens to break the product down to a fine medium. The CoCo Peat is then imported to the United States, where it is sold to The Scott Company. It is blended with other raw materials such as peat moss and compost, and used as an ingredient in the The Scott Company’s “Miracle Gro® Potting Soil Mix” product.

In NY N054636, CBP classified the CoCo Peat under heading 1404, HTSUS, specifically under subheading 1404.90.90, HTSUS, which provides for “Vegetable products not elsewhere specified or included: Other: Other: Other”. CBP also determined that the CoCo Peat did not qualify for NAFTA preferential treatment, because it did not meet the requirements of GN 12(b) and GN 12(t)/14. Finally, CBP found, in accordance with 19 C.F.R. §134.1(b), that the country of origin for the CoCo Peat was Sri Lanka, because there was no change in classification or substantial transformation.

#### ISSUE:

- I. What is the correct classification of “CoCo Peat” product under the HTSUS?
- II. Is “CoCo Peat” eligible for NAFTA preferential treatment?
- III. What is the country of origin of “CoCo Peat”?

#### LAW AND ANALYSIS:

##### I. Classification

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

The 2011 HTSUS provision at issue is as follows:

1404	Vegetable products not elsewhere specified or included:
1404.90	Other:
1404.90.90	Other

In NY N054636, CBP classified the instant merchandise under heading 1404, HTSUS, specifically under subheading 1404.90.90, HTSUS, which provides for “Vegetable products not elsewhere specified or included: Other: Other”. You do not dispute this classification.

CBP notes that this ruling is consistent with NY G87468, dated March 1, 2001, and NY 814194, dated September 18, 1995, both of which classified bricks of coir pith under heading 1404, HTSUS.

##### II. NAFTA Eligibility

General Note (GN) 12, HTSUS, incorporates Article 401 of the North American Free Trade Agreement (NAFTA) into the HTSUS. GN 12(a)(i), HTSUS, provides, in pertinent part, that:

Goods that originate in the territory of a NAFTA party under the terms of subdivision (b) of this note and that qualify to be marked as goods of Canada under the terms of the marking rules set forth in regulations issued by the Secretary of the Treasury (without regard to whether the goods are marked), and goods enumerated in subdivision (u) of this note, when such goods are imported into the customs territory of the United

States and are entered under a subheading for which a rate of duty appears in the “Special” subcolumn followed by the symbol “CA” in parentheses, are eligible for such duty rate, in accordance with section 201 of the North American Free Trade Agreement Implementation Act.

Accordingly, the Coco Peat product will be eligible for the “Special” “CA” rate of duty provided: (1) it is deemed to be NAFTA originating under the provisions of GN 12(b), HTSUS; and, (2) it qualifies to be marked as a product of Canada under the NAFTA Marking Rules that are set forth in Part 102 of the Code of Federal Regulations (19 C.F.R. §102).

In order to determine whether the Coco Peat is NAFTA-originating, we must consult GN 12(b), HTSUS, which provides, in pertinent part, as follows:

For the purposes of this note, goods imported into the Customs territory of the United States are eligible for the tariff treatment and quantitative limitations set forth in the tariff schedule as “goods originating in the territory of a NAFTA party” only if—

(i) they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States; or

\* \* \*

You argue in your submission, dated May 14, 2009, that the instant product is a “good wholly obtained or produced entirely in the territory of Canada” under GN 12(b)(i), HTSUS. Specifically, you argue that the instant product consists of “waste and scrap derived from ... used goods collected in the territory of one or more of the NAFTA parties, provided such goods are fit only for the recovery of raw materials.” See GN 12(n)(ix)(B), HTSUS. In the alternative, you argue that the instant product should be considered a product of Canada due to the Theory of Divestiture, even if the terms of GN 12(b), HTSUS, are not met.

#### A. “Waste or Scrap”

GN 12(n), HTSUS, states, in pertinent part:

As used in [GN 12(b)(i)], the phrase “goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States” means—

\* \* \*

(ix) waste and scrap derived from—

\* \* \*

(B) used goods collected in the territory of one or more of the NAFTA parties, provided such goods are fit only for the recovery of raw materials;

\* \* \*

If the instant merchandise meets the terms of GN 12(n)(ix)(B), HTSUS, it may be considered a good wholly obtained or produced entirely in Canada in accordance with GN 12(b)(i), HTSUS.

In HQ H044166, dated January 23, 2009, CBP considered the importation of certain defective parts from Mexico. Sony Electronics, Inc. (Sony) operated a repair facility in Mexico, to which they would send damaged or defective electronics equipment for repair. The repaired equipment would then be

shipped back to the original consumer, and any damaged or broken parts removed from that equipment would be discarded. Several states enacted laws that required Sony to ship the damaged or broken parts back to the original consumer, instead of discarding them. CBP considered whether these damaged or broken parts would be considered “waste or scrap” under GN 12(n)(ix)(B), HTSUS. CBP found that, in this situation, the defective parts removed by Sony could not be used in any rebuilding or remanufacturing operation. Furthermore, CBP found that the parts were damaged beyond repair, and were only being returned to comply with state requirements. Therefore, CBP concluded that the parts could not be used for their original purposes, and were considered NAFTA originating under GN 12(n)(ix)(B), HTSUS, as waste or scrap.

In HQ 558823, dated February 6, 1995, CBP considered the importation of certain rebuilt air brake system assemblies. Allied Signal exported used vehicle air brake systems (such as compressors, filters, and valves) to Mexico, where they were disassembled, cleaned, inspected, and tested. The reusable parts were repaired if necessary, but unusable parts were scrapped. CBP considered whether these reusable and repaired parts would be considered “waste or scrap” under GN 12(n)(ix)(B), HTSUS. CBP found that, because the air brake system parts could be repaired and used for their original purpose, they were not fit only for the recovery of their raw materials. Therefore, the rebuilt air brake system assemblies under consideration were not considered NAFTA originating under GN 12(n)(ix)(B), HTSUS, as waste or scrap.

The original purpose of the coir pith, when it is imported from Sri Lanka to Canada, is for growing hydroponic vegetables. Specifically, it is packaged in plastic bags and used in hydroponic greenhouse operations. Over the course of one growing season, the coir pith deteriorates to the point that poor performance would be expected if it were used for a second season. This coir pith is typically discarded to landfills, as its useful life has ended. It is CBP’s position that the used coir pith constitutes used goods collected within the territory of a NAFTA party, and that the used coir pith is fit only for the recovery of its raw materials.

However, Envirotex recycles the used coir pith. They collect it from the growers in Canada, filter the plastic bag material, and remove impurities such as roots left behind at the end of the growing season. Once the used coir pith has been cleaned and filtered, it is further broken down to finer sized granules. By this process, Envirotex creates the instant merchandise, CoCo Peat. This product is sold to The Scott Company, as an ingredient for the “Miracle Gro® Potting Soil Mix” product. The CoCo peat is derived from the used coir pith, and it cannot be used for growing hydroponic vegetables. Therefore, it is now CBP’s position that CoCo Peat is “waste and scrap” within the meaning of GN 12(n)(ix)(B), HTSUS, and that it is a NAFTA originating good under GN 12(b)(i), HTSUS.

### B. Theory of Divestiture

You argue that the instant product should be considered a product of Canada due to the Theory of Divestiture, even if the terms of GN 12(b), HTSUS, are not met. The Theory of Divestiture has, in the past, been applied to NAFTA country of origin determinations. *See, e.g.*, HQ 562597, dated March 7, 2003; HQ H561642, dated January 9, 2002. However, because CBP

has found the instant product meets the terms of GN 12(b)(i), HTSUS, it is not necessary to consider whether the Theory of Divestiture applies.

### III. Country of Origin

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. §1304), requires that, unless excepted, every article of foreign origin (or its container) imported into the U.S. 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 manner as to indicate to the ultimate purchaser the English name of the country of origin of the article. The regulations implementing the requirements and exceptions to 19 U.S.C. §1304 are set forth in Part 134, CBP Regulations (19 C.F.R. Part 134).

Section 134.1(b), CBP Regulations (19 C.F.R. §134.1(b)), defines “country of origin” as:

The country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin” within this part ...

Part 102, CBP Regulations (19 C.F.R. Part 102), sets forth the NAFTA Marking Rules. Section 102.11 provides a required hierarchy for determining the country of origin of a good for marking purposes. Applied in sequential order, the required hierarchy establishes that the country of origin of a good is the country in which:

- (a)(1) The good is wholly obtained or produced;
- (a)(2) The good is produced exclusively from domestic materials; or
- (a)(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in Section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

See 19 C.F.R. §102.11(a)(1) to (a)(3).

In NY N054636, CBP determined that the country of origin of the used coir pith was Sri Lanka. You argue instead that the used coir pith is a good wholly obtained or produced in Canada under 19 C.F.R. §102.11(a)(1). In your request for reconsideration, dated May 14, 2009, you first argue that the goods are “waste or scrap” under 19 C.F.R. §102.1(g)(9)(ii). You also argue that the used coir pith has become disassociated with Sri Lanka through the Theory of Divestiture.

#### A. Waste or Scrap

Section 102.1(g)(9)(ii) states, in pertinent part: “(g) ... A good ‘wholly obtained or produced’ in a country means: ... (9) Waste and scrap derived from: ... (ii) Used goods collected in that country provided such goods are fit only for the recovery of raw materials; ...”.

The language cited above is nearly identical to that of GN 12(n)(ix)(B). Thus, for the reasons discussed above in regard to that argument, CBP finds that the used coir pith constitutes used goods collected within Canada, that CoCo peat is derived from used coir pith, and CoCo Peat cannot be used for

growing hydroponic vegetables. Therefore, it is now CBP's position that CoCo Peat is "waste and scrap" within the meaning of 19 C.F.R. §102.1(g)(9)(ii), and that it may be marked as a product of Canada under 19 C.F.R. §102.11(a)(i).

### B. Theory of Divestiture

In the alternative, you argue that the used coir pith has become disassociated with Sri Lanka through the Theory of Divestiture. However, because CBP has found the instant product may be marked as a product of Canada under 19 C.F.R. §102.11(a)(i), it is not necessary to consider whether the Theory of Divestiture applies.

### IV. Conclusion

The instant CoCo Peat product is a NAFTA originating good under the provisions of GN 12(b), HTSUS, and it qualifies to be marked as a product of Canada under the NAFTA Marking Rules set forth in 19 C.F.R. §102. Therefore, it is eligible for the "Special" "CA" rate of duty.

These goods may be subject to regulations or restrictions administered by the U.S. Department of Agriculture, Animal and Plant Health Division, and Agricultural Marketing Service. You may contact these agencies at:

U.S. Department of Agriculture  
APHIS Plant Protection and Quarantine Permit Unit  
4700 River Road, Unit 136  
Riverdale Park, MD 20737-1236  
Telephone: (877) 770-5990

Marketing Order Administration Branch  
Fruit and Vegetable Programs, Agricultural Marketing Service  
U.S. Department of Agriculture  
4700 River Road, Unit 155, Suite 5D03  
Riverdale Park, MD 20737-1227  
Telephone: (301) 734-5246  
FAX: (301) 734-5275

### **HOLDING:**

The instant CoCo Peat product is classified under heading 1404, HTSUS, specifically under subheading 1404.90.90, HTSUS, which provides for "Vegetable products not elsewhere specified or included: Other: Other". The general, column one rate of duty is free.

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 internet at <[www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/)>.

The instant CoCo Peat product is a NAFTA originating good under the provisions of GN 12(b), HTSUS, and it qualifies to be marked as a product of Canada under the NAFTA Marking Rules set forth in 19 C.F.R. §102. Therefore, it is eligible for the "Special" "CA" rate of duty.

### **EFFECT ON OTHER RULINGS:**

New York Ruling Letter N054636, is hereby MODIFIED in accordance with the above analysis.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

## **GENERAL NOTICE**

### **19 CFR PART 177**

#### **PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CERTAIN LIGHTING FIXTURE**

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

**ACTION:** Notice of proposed modification of ruling letter and treatment concerning the tariff classification of a certain lighting fixture 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 interested parties that U.S. Customs and Border Protection (CBP) proposes to modify one ruling letter relating to the tariff classification of a certain light fixture 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 proposed actions.

**DATES:** Comments must be received on or before February 3, 2012.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Office of International Trade, Attention: Trade and Commercial Regulations Branch, 799 9th Street, 5th Floor, N.W., Washington, D.C. 20229-1179. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Dwayne S. Rawlings, Tariff Classification and Marking Branch, (202) 325-0092.

## 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 that 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, this notice advises interested parties that CBP intends to modify one ruling letter pertaining to the tariff classification of a certain lighting fixture. Although in this notice, CBP is specifically referring to the modification of NY N032539, dated July 18, 2009 (Attachment A), this notice covers any rulings on this merchandise that 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 notice of this proposed action.

In NY N032539, CBP classified an article identified as the “Wing Reflector with lamp-holder” in heading 9405, HTSUS, specifically subheading 9405.10.8020, HTSUSA, as “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included ...: Chandeliers and other electric ceiling or wall lighting fittings ...: Other: Other.” It is now CBP’s position that the article is classified in subheading 9405.10.6020, HTSUSA, which provides for “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included ...: Chandeliers and other electric ceiling or wall lighting fittings ...: Of base metal: Other: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to modify NY N032539, and any other ruling not specifically identified, in order to reflect the proper analysis contained in proposed HQ H089796, 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: December 20, 2011

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

Attachments

## [ATTACHMENT A]

N032539

July 18, 2008

CLA-2-94:OT:RR:E:NC:1:110

CATEGORY: Classification

TARIFF NO.: 9405.10.8020; 9405.99.4000

MR. LARRY HART  
HART WORLDWIDE LOGISTICS  
2360 NW 66TH AVE., SUITE 207  
MIAMI, FL 33122

RE: The tariff classification of lighting parts from China.

DEAR MR. HART:

In your letter dated July 2, 2008, you requested a tariff classification ruling on behalf of your client, Lumz n Blooms LTD.

The merchandise under consideration are four light reflectors and a light fixture housing. The five articles are identified as the Cherry Reflector, Cherry Cooler Reflector, Wing Reflector, Dutch Reflector and the Dutch Cooler. The reflectors and housing are designed for use primarily in commercial greenhouses to increase the effect of daylight on plants.

The Cherry Reflector consists of an oval shaped dome made from a single stamp piece of steel anodized with aluminum, with a highly polished smooth interior. This reflector features cutouts for a lamp-holder and mountings, and is imported with steel hanging brackets. The Cherry Cooler Reflector consists of a rectangular housing of stamp steel holding a Cherry Reflector, and features a tempered glass lens and steel mounting brackets.

The Wing Reflector is a rectangular sheet of highly polished light-weight aluminum with a series of bends forming a half cylinder shaped reflector. As stated in your ruling request, the Wing Reflector will be imported in two models, one with a lamp-holder and one designed for use with a corded lamp-holder, sold separately. As imported, the Wing Reflector model with lamp-holder has the essential character of a light fixture and is classified as such.

The Dutch Reflector consists of a round shaped dome made from a single stamp piece of steel anodized with aluminum, with a highly polished smooth interior. This reflector features a die-cast collar and cutouts for a lamp-holder. The Dutch Cooler is a sealed steel housing hood designed to hold the Dutch Reflector. This housing features a sealed tempered glass lens.

The applicable subheading for the Wing Reflector with lamp-holder will be 9405.10.8020, Tariff Schedule of the United States (HTSUS), which provides for "Lamps and lighting fittings...: Chandeliers and other electric ceiling or wall lighting fittings...: Other: Other." The general rate of duty will be 3.9 percent ad valorem.

The applicable subheading for the Cherry Reflector, Cherry Cooler Reflector, Wing Reflector without lamp-holder, Dutch Reflector and the Dutch Cooler will be 9405.99.4000, HTSUS, which provides for "Lamps and lighting fittings...parts thereof not elsewhere specified or included: Parts: Other: Other." The general rate of duty will be 6 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Campanelli at 646-733-3016.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H089796  
CLA-2 OT:RR:CTF:TCM H089796 DSR  
CATEGORY: Classification  
TARIFF NO.: 9405.10.6020

MR. LARRY HART  
HART WORLDWIDE LOGISTICS  
2360 NW 66TH AVE., SUITE 207  
MIAMI, FL 33122

RE: Modification of NY N032539, dated July 18, 2009; Tariff classification of lighting parts

DEAR MR. HART:

This is in reference to New York Ruling Letter (NY) N032539, issued to you on July 18, 2009, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of lighting parts from China. The ruling classified four light reflectors and one light fixture. The articles are identified as the Cherry Reflector, Cherry Cooler Reflector, Wing Reflector, Dutch Reflector, and the Dutch Cooler. The Wing Reflector will be imported in two models – one with a lamp-holder and one designed for use with a corded lamp holder that is sold separately.

The Wing Reflector with lamp-holder, which is at issue here, was classified in subheading 9405.10.8020, HTSUSA, which provides for “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; ...and parts thereof not elsewhere specified or included: Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares: Other: Household.”

U.S. Customs and Border Protection (CBP) has reviewed the tariff classification of the Wing Reflector with lamp-holder and has determined that the cited ruling is in error. Therefore, NY N032539 is modified for the reasons set forth in this ruling.

**FACTS:**

The Wing Reflector with lamp-holder is designed for use in commercial greenhouses. It is comprised of a rectangular sheet of highly polished light-weight aluminum with a series of bends forming a half cylinder shaped reflector, which incorporates a lamp-holder. A steel hanging plate with sturdy hangers allows it to be suspended from the ceiling. It was determined that article possessed the essential character of a light fixture and was classified in subheading 9405.10.8020, HTSUS, as an electric ceiling or wall lighting fitting of other than of base metal, of a class or kind for household use.

**ISSUE:**

Whether the Wing Reflector with lamp-holder is classified under subheading 9405.10.6020, HTSUS, as an electric ceiling or wall lighting fitting of base metal other than brass, for other than household use; or under subheading 9405.10.8020, HTSUS, as an electric ceiling or wall lighting fitting of other than of base metal, of a class or kind for household use.

**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 relevant HTSUS provisions under consideration state the following:

**9405** Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included;

**9405.10** Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares:

\* \* \*

Of base metal:

**9405.10.60** Other:

\* \* \*

**9405.10.80** Other.

There is no question that the Wing Reflector with lamp-holder is a lamp or lighting fitting not elsewhere specified or included and is thus described *eo nomine* by heading 9405, HTSUS. Accordingly, this matter is governed by GRI 6, which states the following:

For legal purposes, 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 the above rules, 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 9405.10, HTSUS, provides for electric ceiling or wall light fittings of base metal and the subject article is composed of aluminum and steel, both of which are base metals as defined Note 3, Section XV, HTSUS.<sup>1</sup> The Wing Reflector with lamp-holder is thus provided for *eo nomine* by subheading 9405.10, HTSUS.

<sup>1</sup> Note 3, Section XVI, HTSUS, states that “[u]nless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

The Wing Reflector with lamp-holder is composed of base metals other than brass and is designed for use in commercial greenhouses. Therefore, the applicable subheading for the article will be 9405.10.6020, HTSUSA, which provides for electric ceiling or wall lighting fittings of base metal other than brass, for other than household use. *See also* NY N086057, dated December 11, 2009.

**HOLDING:**

By application of GRIs 1 and 6, the subject merchandise identified as the “Wing Reflector with lamp-holder” is classifiable under heading 9405, HTSUS. Specifically, it is classifiable under subheading 9405.10.6020, HTSUS, which provides for “Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included; Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares: Of base metal: Other: Other.” The column one, general rate of duty is 7.6 percent *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided at [www.usitc.gov/tata/hts](http://www.usitc.gov/tata/hts).

**EFFECT ON OTHER RULINGS:**

NY N032539, dated July 18, 2009, is hereby modified with respect to the classification of the Wing Reflector with lamp-holder.

*Sincerely,*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

**WITHDRAWAL OF MODIFICATION OF ONE RULING  
LETTER AND REVOCATION OF ONE RULING LETTER  
AND WITHDRAWAL OF REVOCATION OF TREATMENT  
CONCERNING THE CLASSIFICATION OF A SURGICAL  
LIGHT SYSTEM AND CERTAIN COMPONENT PARTS**

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

**ACTION:** Notice of withdrawal of modification of one ruling letter and revocation of one ruling letter and notice of revocation of treatment concerning the classification of a surgical light system and certain component parts.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by Section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (“CBP”) is

withdrawing its proposed modification of Headquarters Ruling Letter 967159, dated November 17, 2004, and New York Ruling Letter L83104, dated March 11, 2005, concerning the tariff classification of the Steris® Harmony Surgical Lighting and Visualization System, and selected parts thereof, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is withdrawing its intent to revoke any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published on June 23, 2010, in the *Customs Bulletin* Vol. 44, No. 26.

**FOR FURTHER INFORMATION CONTACT:** Richard Mojica, Tariff Classification and Marking Branch, (202) 325-0032.

### **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.

CBP is hereby withdrawing its intent to modify HQ 967159 and revoke NY L83104, because the classification of a substantially similar surgical lamp system was addressed by the Court of International Trade in *Trumpf Medical System, Inc., v. United States*, Slip Op. 10-123 (October 27, 2010). The court also addressed the classification of its component parts in *Trumpf Medical System, Inc., v. United States*, Slip. Op. 11-5 (January 18, 2011). The guidance offered by the court in *Trumpf* is instructive with regard to the classification of the Steris® merchandise at issue in HQ 967159 and NY L83104.

Dated: December 20, 2011

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

**PROPOSED REVOCATION OF RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF STACKING DRAWERS**

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

**ACTION:** Notice of proposed revocation of one ruling letter and proposed revocation of treatment relating to tariff classification of plastic stacking drawers.

**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) proposes to revoke New York Ruling Letter (NY) N042968, dated November 26, 2008, relating to the tariff classification of plastic stacking drawers under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed action.

**DATES:** Comments must be received on or before February 3, 2012.

**ADDRESSES:** Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. 5th Floor, Washington, D.C. 20229–1179. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20229 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

## 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, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the tariff classification of plastic stacking drawers imported by The Container Store, Inc. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter N042968, dated November 26, 2008, (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., 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, as amended (19 U.S.C. 1625 (c)(2)), CBP proposes 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 notice of this proposed action.

In NY N042968, CBP determined that three plastic stacking drawers were classified in heading 3924, HTSUS, which provides for “Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:”

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N042968 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the stacking drawers in heading 9403, HTSUS, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H086941, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

Dated: December 13, 2011

IEVA K. O’ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

Attachments

## [ATTACHMENT A]

N042968

November 26, 2008

CLA-2-39:OT:RR:E:NC:N2:222

CATEGORY: Classification

TARIFF NO.: 3924.90.5600

Ms. GERI DAVIDSON  
THE CONTAINER STORE  
500 FREEPOR T PKWY  
COPPELL, TX 75019

RE: The tariff classification of a plastic stacking drawer from Japan

DEAR Ms. DAVIDSON:

In your letter dated October 28, 2008, you requested a tariff classification ruling.

The submitted illustration is identified as a Stacking Drawer. This item is a rectangular container that is made of polystyrene (PS) plastic material. Access is gained to the inside of the container by means of a drawer that pulls out horizontally from the front. The drawer itself is made of polypropylene (PP) plastic material. This item has a smoke coloring and is tinted. Articles that will be stored in the drawer will be visible from outside the drawer. This item can be used for the storage of T-shirts, jeans, sweaters, accessories or paper goods.

This item will be imported in three different height sizes as follows:

SKU# 10049054 – Small Stacking Drawer Smoke. This item measures 12–1/2 inches by 20–1/2 inches by 6 inches in height

SKU# 10049071 – Medium Stacking Drawer Smoke. This item measures 12–1/2 inches by 20–1/2 inches by 8 inches in height.

SKU# 10049072 – Large Stacking Drawer Smoke. This item measures 12–1/2 inches by 20–1/2 inches by 12 inches in height.

The applicable subheading for SKU# 10049054, SKU# 10049071 and SKU# 10049072 will be 3924.90.5600, Harmonized Tariff Schedule of the United States (HTSUS), which provides for...other household articles...of plastics: other: other. The rate of duty will be 3.4 percent ad valorem.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Gary Kalus at (646) 733-3055.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

## [ATTACHMENT B]

HQ H086941  
CLA-2 OT:RR:CTF:TCM H086941 CkG  
CATEGORY: Classification  
TARIFF NO: 9403.70.80

MS. GERI DAVIDSON  
THE CONTAINER STORE  
500 FREEPORT PKWY  
COPPELL, TX 75019

RE: Reconsideration of NY N042968; classification of plastic stacking drawers

DEAR MS. DAVIDSON:

This is in response to your letter of November 10, 2009, requesting the reconsideration of New York Ruling Letter (NY) N042968, issued on November 26, 2008. CBP ruled in this decision that separately imported plastic stacking drawers were classified in heading 3924, HTSUS, as household articles of plastic. You request classification in heading 9403, HTSUS, as articles of furniture.

**FACTS:**

The merchandise consists of three polystyrene (PS) rectangular plastic drawer units, imported in different height sizes as follows:

SKU# 10049054 – Small Stacking Drawer Smoke. This item measures 12–1/2 inches by 20–1/2 inches by 6 inches in height

SKU# 10049071 – Medium Stacking Drawer Smoke. This item measures 12–1/2 inches by 20–1/2 inches by 8 inches in height.

SKU# 10049072 – Large Stacking Drawer Smoke. This item measures 12–1/2 inches by 20–1/2 inches by 12 inches in height.

Each drawer unit is designed to stack one on the other and has interlocking edges which secure the drawers to each other and locking them into place, thus forming a free standing drawer system. The drawers have a smoke coloring and are tinted. Articles that will be stored in the drawer will be visible from outside the drawer.

**ISSUE:**

Whether the stackable drawers are classifiable as household articles of plastic of heading 3924, HTSUS, or articles of furniture of heading 9403, HTSUS.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes and, provided such headings or notes do not otherwise require, according to the remaining GRIs 2 through 6.

The HTSUS provisions under consideration are as follows:

3924: Tableware, kitchenware, other household articles and hygienic or toilet articles, of plastics:

3924.90: Other:

3924.90.56: Other.

\* \* \* \*

9403: Other furniture and parts thereof:

9403.70: Furniture  
of  
plastics:

9403.70.80: Other.

\* \* \* \*

Note 2(x) to Chapter 39 provides as follows:

This chapter does not cover...articles of Chapter 94 (for example, furniture, lamps and lighting fittings, illuminated signs, prefabricated buildings).

Note 2 to Chapter 94 provides, in pertinent part, as follows:

The articles (other than parts) referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground.

The following are, however, to be classified in the above-mentioned headings even if they are designed to be hung, to be fixed to the wall or to stand one on the other:

(a) Cupboards, bookcases, other shelved furniture and unit furniture;

\* \* \* \*

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

The General Notes to the EN to Chapter 39 state that "heading 39.26 is a residual heading which covers articles, not specified elsewhere or included, of plastics or of other materials of headings 39.01 to 39.14."

General (EN) (4)(B)(i) to Chapter 94, HTSUS, reads as follows:

For the purposes of this Chapter, the term 'furniture' means:

(B) The following:

(i) Cupboards, bookcases, other shelved furniture and unit furniture, designed to be hung, to be fixed to the wall or to stand one on the other or side by side, for holding various objects or articles (books, crockery,

kitchen utensils, glassware, linen, medicaments, toilet articles, radio or television receivers, ornaments, etc.) and separately presented elements of unit furniture.

EN 94.03 provides, in pertinent part:

This heading covers furniture and parts thereof, **not covered** by the previous headings. It includes furniture for general use (e.g., cupboards, show-cases, tables, telephone stands, writing-desks, escritaires, book-cases, and other shelved furniture, etc.), and also furniture for special uses.

The heading includes furnitures for:

(1) **Private dwellings, hotels, etc.**, such as : cabinets, linen chests, bread chests, log chests; chests of drawers, tallboys; pedestals, plant stands; dressing-tables; pedestal tables; wardrobes, linen presses; hall stands, umbrella stands; side-boards, dressers, cupboards; food-safes; bedside tables; beds (including wardrobe beds, camp-beds, folding beds, cots, etc.); needlework tables; foot-stools, fire screens; draught-screens; pedestal ashtrays; music cabinets, music stands or desks; play-pens; serving trolleys (whether or not fitted with a hot plate).

\* \* \* \*

Classification within Chapter 39 is subject to Legal Note 2(x), which excludes articles of Chapter 94 from classification in Chapter 39. Therefore, if the instant drawers are classifiable in heading 9403, HTSUS, they are excluded from classification in any of the provisions of Chapters 39, even if described therein. We will therefore first address the classification in Chapter 94 of the instant merchandise.

Legal Note 2 to Chapter 94 states that “the articles (other than parts) referred to in headings 9401 to 9403 are to be classified in those headings only if they are designed for placing on the floor or ground.” General EN 4(A) to Chapter 94 defines furniture as: “[a]ny ‘movable’ articles ... which have the essential characteristic that they are constructed for placing on the floor or ground, and which are used, mainly with a utilitarian purpose, to equip private dwellings and other places.”

Although the individual drawer units are imported and presented separately, they are designed to be used as a free standing drawer system, with each drawer interlocking with and standing on the one below. Thus, while only the bottom drawer will be placed on the ground, the interlocked drawers constitute a single, movable unit designed for placing on the floor or ground, which has the utilitarian purpose of storing clothing and other personal items. The drawer set is also of a class or kind with those articles enumerated in EN 94.03 which are designed for a similar purpose, such as chests of drawers and dressers.

Note 2 to Chapter 94 further states that cupboards, bookcases and other shelved or unit furniture remains in that Chapter even if designed to stand one on the other. While the term “unit furniture is not defined in the tariff or ENs, CBP has consistently held that “unit furniture” refers to different elements of furniture which are designed and intended to be used to create one unit. See *e.g.*, HQ 966672, dated March 8, 2004; HQ 950246, dated November 22, 1991; NY N013745, dated July 10, 2007; NY N003710, dated December 4, 2006. In *StoreWALL, LLC v. United States*, the Court of International Trade further defined “unit furniture” as follows:

- (a) [\*\*6] fitted with other pieces to form a larger system or which is itself composed of smaller complementary items,
- (b) designed to be hung, to be fixed to the wall, or to stand one on the other or side by side, and
- (c) assembled together in various ways to suit the consumer's individual needs to hold various objects or articles, but
- (d) excludes other wall fixtures such as coat, hat and similar racks, key racks, clothes brush hangers, and newspaper racks.

*See StoreWALL, LLC v. United States*, 675 F. Supp. 2d 1200 (Ct. Int'l Trade 2009), *aff'd* 644 F.3d 1358 (Fed. Cir. 2011).

Each drawer may thus be considered to be a separately presented element of unit furniture pursuant to the General EN to heading 9403, HTSUS. That the individual drawers are designed to stand on each other therefore does not take them out of heading 9403, HTSUS.

Based on the above discussion, the instant drawers are classified as furniture of heading 9403, HTSUS.

#### **HOLDING:**

By application of GRI, the instant drawers are classified in heading 9403, HTSUS, specifically in subheading 9403.70.80, HTSUS, which provides for "Other furniture and parts thereof: Furniture of plastics: Other." The 2011 column one, general rate of duty is Free.

Duty rates are provided for your convenience and 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/tata/hts/](http://www.usitc.gov/tata/hts/).

#### **EFFECT ON OTHER RULINGS:**

NY N042968, dated November 26, 2008, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*