

Bureau of Customs and Border Protection

General Notices

Automated Commercial Environment (ACE): Elimination of Bond Rider Requirement for Participation in Periodic Monthly Statement Payment Process

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

ACTION: General notice.

SUMMARY: This notice announces changes in the Bureau of Customs and Border Protection's (CBP) National Customs Automation Program (NCAP) test concerning periodic monthly deposit of estimated duties and fees. Participants in the Periodic Monthly Statement test are no longer required to provide a bond rider covering the periodic payment of estimated duties and fees. Nonpayment or untimely payment of estimated duties and fees, however, may result in action by CBP to impose sanctions on the delinquent importer of record or to allow the surety to terminate its basic importation bond. If the bond principal is a participant in the Periodic Monthly Statement test, sureties will now be allowed, under certain conditions, to terminate bonds with 3 business days notice to the bond principal and CBP.

EFFECTIVE DATES: The elimination of the requirement to provide a bond rider covering the periodic payment of estimated duties is effective immediately.

ADDRESSES: Comments concerning this notice should be submitted to Robert B. Hamilton via email at Robert.B.Hamilton@dhs.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2004, the Bureau of Customs and Border Protection (CBP) published a General Notice in the **Federal Register** (69 FR 5362) announcing the National Customs Automation Program (NCAP) test for Periodic Monthly Payment Statement Process. The

test, which is part of CBP's Automated Commercial Environment (ACE), benefits participants by giving them access to operational data through the ACE Secured Data Portal ("ACE Portal"), which provides them the capability to interact electronically with CBP, and by allowing them to deposit estimated duties and fees on a monthly basis based on a Periodic Monthly Statement generated by CBP.

When the test started, only importers were eligible to apply for the test. Eligibility was later expanded to allow brokers to apply if they were specifically designated by an ACE importer.

On September 8, 2004, CBP published a General Notice in the **Federal Register** (69 FR 54302) which invited customs brokers, regardless of whether they were designated by participating importers to make Periodic Monthly Statement payments on their behalf, to apply to participate in the test. That notice set forth eligibility requirements for both importers and brokers.

On February 1, 2005, CBP published a General Notice in the **Federal Register** (70 FR 5199) announcing that applicants seeking to establish importer or broker accounts so as to access the ACE Portal, or to participate in any ACE test (including the test for Periodic Monthly Payment Statement Process), are no longer required to provide a statement certifying participation in the Customs Trade Partnership Against Terrorism (C-TPAT).

On August 8, 2005, CBP published a General Notice in the **Federal Register** (70 FR 45736) changing the time period allowed for the deposit of the duties and fees from the 15th calendar day to the 15th working day of the month following the month in which the goods are either entered or released. That change was made in order to comply with the provisions of section 2004 of the Miscellaneous Trade and Technical Corrections Act of 2004, Public Law 108-429, which extended the time of deposit of those estimated duties and fees. The document also advised that entries containing Census errors are eligible to be placed on a Periodic Daily Statement and designated for monthly payment. Finally, the document described those situations where liquidated damages would be imposed for failing to pay estimated duties in a timely manner.

As provided in the February 4, 2004 General Notice announcing the test, participants in the Periodic Monthly Statement test are required to schedule entries for monthly payment. A Periodic Monthly Statement will list Periodic Daily Statements that have been designated for monthly payment. The Periodic Monthly Statement can be created on a port basis by the importer or broker, as was the case with existing daily statements in the Automated Commercial System (ACS) (ACE is the successor to ACS). The Periodic Monthly Statement can be created on a national basis by an Automated Broker Interface (ABI) filer. If an importer chooses to file the Periodic

Monthly Statement on a national basis he must use his filer code and schedule and pay the monthly statements timely. The Periodic Monthly Statement will be routed under existing CBP procedures. Brokers will only view / receive information that they have filed on an importer's behalf. ACE will not route a Periodic Monthly Statement to a broker through ABI if that statement lists information filed by another broker.

The February 4, 2004, Notice also stated that, in addition to other responsibilities, test participants are required to provide a bond rider covering the periodic payment of estimated duties.

ELIMINATION OF THE PERIODIC MONTHLY STATEMENT PAYMENT BOND RIDER

In order to open participation in the Periodic Monthly Statement test to the widest number of importers, CBP will no longer require that an applicant, in order to participate in the test, submit a bond rider as required by the Federal Register Notice of February 4, 2004. CBP has determined that the rider is not necessary, inasmuch as the terms and conditions of the basic importation bond under section 113.62 of the CBP Regulations (title 19 Code of Federal Regulations (CFR), section 113.62) require the bond obligors to deposit, in the time period prescribed by law or regulation, any duties, taxes, and charges imposed, or estimated to be due, at the time of merchandise release or withdrawal.

Submission of the bond rider does have the effect of alerting the surety guaranteeing performance that the bond principal is participating in the Periodic Monthly Statement test. CBP agrees that, as a result of elimination of the rider submission requirement, it will notify sureties, electronically, of a bond principal's participation in the test.

Failure to Pay, or to Timely Pay, Estimated Duties and Fees

A bond principal who fails to meet its obligation to pay estimated duties and fees under the test should not continue to enjoy the benefits of the deferred payment of estimated duties and fees. Such an allowance would further stress the bond amount and place the revenue in jeopardy. As such, CBP, through this notice, suspends those regulations in Part 142 relating to the delinquent payment of CBP bills as they relate to non-payment or late payment of estimated duties and fees made under the Periodic Monthly Statement test. Any bond principal who is late with an estimated monthly statement estimated duty payment by more than 2 business days will be notified by CBP, either electronically or by paper notification, that immediately it shall be required to file entry summary documentation with estimated duties and fees attached before its merchandise may be released from any CBP port. The surety on the affected bond will also be notified. The bond principal will only be released from such a

requirement upon full payment of any unpaid estimated duties and fees that have come due under the Periodic Monthly Statement test.

During the test, CBP will retain the right to deny Periodic Monthly Statement payment privileges to any importer that is repeatedly delinquent in the payment of estimated duties and fees due.

Termination of Bonds

For purposes of the test, the provisions of 19 CFR Part 113 relating to termination of bonds will be suspended, in certain situations, insofar as sureties will be permitted to terminate bonds with 3 business days notice to the bond principal and CBP. Section 113.27(b) of the CBP Regulations (19 CFR 113.27(b)) generally requires a 30-day notice (with exceptions) for surety termination of a bond. Sureties may now terminate bonds with 3 business days notice when termination by the surety occurs because the surety does not accept the risk relating to participation by the bond principal in the Periodic Monthly Statement test. Sureties may also terminate bonds with 3 business days notice when termination is a result of the failure of the bond principal to perform obligations arising as a result of participation in the test; however, a termination under these circumstances can only take place after the surety has satisfied its obligations which have arisen as a result of the principal's failure to perform. The importer whose bond is terminated by a surety will be suspended from participation in the test unless a new surety is obtained. Notification of termination to CBP shall be provided to the Revenue Division, Office of Finance, 6650 Telecom Dr., Suite 100, Attn: Bond Team, Indianapolis, Indiana 46278. Notice of termination to CBP must be in writing and must be delivered by overnight mail, other express delivery service, or fax. Notice of termination to the bond principal must be in writing and must be delivered by overnight mail or other express delivery service. Any notice of termination provided to CBP must include a declaration that the bond principal has been notified of termination.

Suspension of the Regulations

During the testing of the Periodic Monthly Statement process, CBP will suspend provisions in Parts 24, 141, 142, and 143 of the Customs and Border Protection Regulations (Title 19 Code of Federal Regulations) pertaining to financial, accounting, entry procedures, deposit of estimated duties and fees, and the delinquent payment of CBP bills. CBP will also suspend the provisions of Part 113 of the Customs and Border Protection Regulations with regard to surety termination of bonds only in the manner and for the reasons discussed in this Notice. All other provisions of Part 113 of the Customs and Border Protection Regulations remain in effect during this test. All of the terms of the test and criteria for participation therein,

as announced in the previous notices identified above, continue to be applicable unless changed by this notice.

DATED: September 19, 2005

THOMAS S. WINKOWSKI,
*Acting Deputy Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, September 22, 2005 (70 FR 55623)]

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

Washington, DC, September 21, 2005

The following documents of the Bureau of Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

Virginia L. Brown for MICHAEL T. SCHMITZ,
*Assistant Commissioner,
Office of Regulations and Rulings.*

**PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
CERTAIN FOOTWEAR WITHOUT APPLIED SOLES**

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

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to the tariff classification of certain footwear without applied soles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) intends to revoke a ruling letter pertaining to the tariff classification of certain footwear without applied soles, and to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before November 4, 2005.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at CBP, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by contacting Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Tariff Classification and Marking Branch, at (202) 572-8811.

SUPPLEMENTARY INFORMATION:

Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of certain footwear without applied soles. Although in this notice CBP is specifically referring to New York Ruling Letter (NY) L83856, this notice covers any rulings relating to the specific issues of tariff classification set forth in the ruling, which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No additional rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, an internal advice memorandum or decision, or a protest review decision) on the issues subject to this notice, should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), 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 subsequent to the effective date of the final decision on this notice.

In NY L83856, dated April 22, 2005, two styles of knit textile slipper socks were found to have separately applied soles and were classified in subheading 6405.20.90, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Other footwear: With uppers of textile materials: Other." NY L83856 is set forth as Attachment A to this document.

Upon review of NY L83856, we find that the fabric patches that are applied to the slipper socks do not constitute outer soles in and of themselves, and the footwear does not incorporate pre-existing outer soles. The knit textile slipper socks should be classified in subheading 6115.93.9020, HTSUSA, which, in pertinent part, provides for "Panty hose . . . socks and other hosiery, including . . . footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other: Other, Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to revoke NY L83856 and any other rulings not specifically identified, to reflect the proper classification of the slipper socks according to the analysis in proposed Headquarters Ruling Letter (HQ) 967851, which is set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment that CBP may have previously accorded to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: September 16, 2005

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

Attachments



[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY L83856
April 22, 2005
CLA-2-64:RR:NC:SP:247 L83856
CATEGORY: Classification
TARIFF NO.: 6405.20.90

MS. SUSIE KOO
DML MARKETING GROUP, LTD. (Legale)
7711 Hayvenhurst Avenue
Van Nuys, CA 91406

RE: The tariff classification of footwear from China

DEAR MS. KOO:

In your letter dated April 4, 2005 you requested a tariff classification ruling for two indoor use slippers.

The two half pair samples are both slipper socks that are marked and identified by you as Style A and Style B and that have separately applied soles. Style A has a knit textile material upper that you state is of acrylic, polyester and nylon fibers, with a separately sewn-on outer sole consisting of two large textile fabric patches with some small, widely spaced plastic traction dots. This indoor slipper also has a padded green frog face sewn-on at the ankle. Style B has a knit textile material upper that you state is of acrylic and nylon fibers and it also has a separately sewn-on outer sole consisting of two large textile fabric patches with some small, widely spaced plastic traction dots. This indoor slipper features a plush textile monkey figure accessory, complete with a head, plastic eyes and a tail, sewn onto the instep portion of the upper.

The applicable subheading for both these indoor use slippers, identified as Style A and Style B, will be 6405.20.90, Harmonized Tariff Schedule of the United States (HTS), which provides for footwear in which the sole's external surface is predominately other than rubber, plastics, leather or composition leather; in which the upper's external surface is predominately textile materials; in which the fabric of the upper consists, by weight, predominately of fibers other than vegetable fibers or wool (linings, accessories or reinforcements not included); and which has a line of demarcation between the sole and the upper. The rate of duty will be 12.5% ad valorem.

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

A copy of the ruling 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 Richard Foley at 646-733-3042.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967851
CLA-2 RR:CTF:TCM 967851 GGD
CATEGORY: Classification
TARIFF NO.: 6115.93.9020

MS. SUSIE KOO
DML MARKETING GROUP, LTD. (Legale)
7711 Hayvenhurst Avenue
Van Nuys, California 91406

RE: Revocation of NY L83856; Slipper Socks; Not Footwear with Applied Soles

DEAR MS. KOO:

In New York Ruling Letter (NY) L83856, issued to you April 22, 2005, two styles of knit textile slipper socks were classified in subheading 6405.20.90,

Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for “Other footwear: With uppers of textile materials: Other,” with an applicable duty rate of 12.5 percent ad valorem. We have reviewed that ruling and have found it to be in error. Therefore, this ruling revokes NY L83856.

FACTS:

In NY L83856, the two half pair samples of slipper socks, identified as styles A and B, were found to have separately applied soles. Style A has a knit upper of a textile material you state is composed of acrylic, polyester and nylon fibers. What was found to constitute an outer sole consists of two, separately sewn-on patches of textile fabric with small, widely spaced, plastic traction dots. Style A also has a padded, green frog face sewn-on at the ankle.

Style B has a knit upper of a textile material you state is composed of acrylic and nylon fibers. What was found to constitute an outer sole consists of two, separately sewn-on patches of textile fabric with small, widely spaced, plastic traction dots. Style B features a plush textile monkey figure accessory, with a head, plastic eyes and a tail, sewn onto the instep portion of the upper.

ISSUE:

Whether the textile footwear is properly classified in subheading 6405.20.90, HTSUSA, as “Other footwear: With uppers of textile materials: Other;” or in subheading 6115.93.9020, HTSUSA, textile category 632, as “Panty hose . . . stockings, socks and other hosiery, including . . . footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other: Other, Other.”

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Among other merchandise, chapter 64, HTSUSA, covers footwear. Note 1(b) to chapter 64 states that “[t]his chapter does not cover: Footwear of textile material, without an outer sole glued, sewn or otherwise affixed or applied to the upper (section XI).” In pertinent part, note 4(b) to chapter 64 states that “[t]he constituent material of the outer sole shall be taken to be the material having the greatest surface area in contact with the ground, no account being taken of accessories or reinforcements such as spikes, bars, nails, protectors or similar attachments.”

Section XI, HTSUSA (the section under which chapter 61 falls), covers textiles and textile articles. Note 1(n) to section XI states that “[t]his section does not cover: Footwear or parts of footwear, gaiters or leggings or similar articles of chapter 64.” Chapter 61, HTSUSA, covers articles of apparel and

clothing accessories, knitted or crocheted. Among other goods, heading 6115, HTSUSA, covers “. . . stockings, socks and other hosiery, including . . . footwear without applied soles. . . .”

The samples at issue are textile slipper socks whose entire underfoot area would be in contact with the ground. In order for such footwear to be classified in chapter 64, HTSUS, the outer sole must be a separately identifiable component prior to its application to the upper and encompass essentially the entire underfoot area, and the complete article must not be designed to be worn inside other footwear. Mere patches, pads, dots, strips, etc., that are attached to a sock's underfoot area, do not, in and of themselves, constitute an applied sole. Such materials attached to a pre-existing outer sole, however, are considered in determining the constituent material having the greatest surface area in contact with the ground. Although neither style A nor B appears clearly designed to be worn inside other footwear, the textile fabric patches (with traction dots) that are applied to the slipper socks do not constitute separately identifiable components which encompass essentially the entire underfoot area. The textile fabric patches do not constitute an outer sole in and of themselves, and the socks do not incorporate a pre-existing outer sole. In light of the above analysis, we find that the two styles of slipper socks are properly classified under heading 6115, as footwear without applied soles.

HOLDING:

NY L83856, issued April 22, 2005, is hereby revoked.

The slipper socks identified as styles A and B are classified in subheading 6115.93.9020, HTSUSA, the provision for “Panty hose . . . stockings, socks and other hosiery, including . . . footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other: Other, Other.” The general column one duty rate is 14.6 percent ad valorem.

Merchandise classified in subheading 6115.93.9020, HTSUSA, falls within textile category 632. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas,” which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at <http://otexa.ita.doc.gov>.

MYLES B. HARMON,

Director;

Commercial and Trade Facilitation Division.

19 CFR PART 177

MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN SYNTHETIC “PUMICE STONES” COMPRISED OF GLASS, PLASTIC OR AGGLOMERATED STONE

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

ACTION: Notice of modification and revocation of ruling letters and revocation of treatment relating to the tariff classification of certain synthetic “pumice stones” comprised of foamed glass, plastic or agglomerated material under the Harmonized Tariff Schedule of the United States Annotated (“HTSUSA”).

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 CBP is modifying seven rulings and revoking four rulings concerning the tariff classification of certain synthetic “pumice stones” comprised of foamed glass, plastic or agglomerated material and is revoking any treatment CBP has previously accorded to substantially identical transactions. Notice of the proposed modifications and revocations was published on August 10, 2005, in Vol. 39, No. 33 of the *Customs Bulletin*. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 4, 2005.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, Tariff Classification and Marking Branch: (202) 572–8776.

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 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 CBP's obligations, notice was published on August 10, 2005, in Vol. 39, No. 33 of the *Customs Bulletin* proposing to modify New York Ruling Letters ("NYs") D84445, D84446, D84447, dated November 25, 1998; NY F85435, dated April 17, 2000; NY D80071, dated August 5, 1998; NY H80586, dated May 22, 2001 and NY A84500, dated June 21, 1996, and proposing to revoke Headquarters Ruling Letter ("HQ") 085886, dated February 22, 1990; NY 834656, dated January 17, 1989; HQ 086282, dated May 7, 1990 and NY 831549, dated September 20, 1988. In the aforementioned rulings, merchandise variously described as synthetic or artificial pumice and abrasive articles comprised of foamed glass or plastic, and agglomerated pumice stone was classified under either subheading 3304.99.50, HTSUS, which provides for beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: manicure or pedicure preparations: other: other: other; or subheading 3307.90.00, HTSUS, which provides for other pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included. In reaching these conclusions, we reasoned generally that the articles were *ejusdem generis* with the cosmetic or toilet preparations of headings 3304 and 3307, HTSUS. No comments were received in response to this notice.

As stated in the proposed notice, the modification and revocation actions will cover 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 other than those herein identified; no further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(2)), 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 reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

We have reconsidered the classification of the merchandise and have determined that the "pumice stones" comprised of various substances are distinguishable from the beauty, cosmetic and toilet preparations classified under headings 3304 and 3307 HTSUS. At General Rule of Interpretation ("GRI") 1, none of the "pumice" stones are *prima facie* classifiable as either type (3304 or 3307, HTSUS) of preparation. We conclude in the attached rulings that the merchandise should be classified, at GRI 1 and according to the relevant Chapter and Explanatory Notes, in consideration of their respective constituent materials.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying NYs D84445, D84446, D84447, NY F85435, NY D80071, NY H80586 and NY A84500 and is revoking HQ 085886, NY 834656, HQ 086282 and NY 831549 as they pertain to the classification of certain natural, artificial or synthetic "pumice stone" comprised of foamed glass, plastic or other agglomerated material, and any other ruling not specifically identified, to reflect the proper classification of the merchandise, in accordance with the analysis in the attached rulings, as follows:

In HQ 966861 (attached to this document which revokes HQ 085866 and NY 834866), the glass manicure/pedicure articles are classified under subheading 7013.99.5000, HTSUSA, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): other glassware: other: other: other: valued over \$0.30 but not over \$3 each.

In HQ 966867 (attached to this document which revokes HQ 086282 and NY 831549), the glass manicure/pedicure articles are classified under subheading 7013.99.5000, HTSUSA, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): other glassware: other: other: other: valued over \$0.30 but not over \$3 each; and the plastic manicure/pedicure articles are classified under subheading 3924.90.5500, HTSUSA, which provides for tableware, kitchenware, other household articles and toilet articles, of plastics: toilet articles, of plastics: other: other.

In HQ 966876 (attached to this document which modifies NYs D84445, D84446, D84447, F85435, D80071, and H80586), the glass manicure/pedicure articles are classified under subheading 7013.99.5000, HTSUSA, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): other glassware: other: other: other: valued over \$0.30 but not over \$3 each; and the plastic manicure/pedicure articles are classified under subheading 3924.90.5500, HTSUSA, which provides for tableware, kitchenware, other household articles and toilet articles, of plastics: toilet articles, of plastics: other: other; and the manicure/pedicure articles that are comprised of natural pumice; *i.e.*, the foot pumice stone in NY D80071, is classified under subheading 6804.30.0000, HTSUSA, which provides for other millstones, grindstones, grinding wheels and the like: other: hand sharpening or polishing stones. The constituent material of the synthetic pumice body smoother in F85435 is unknown; it is classifiable according to the analysis contained and criteria set forth in HQ 966876.

In HQ 966877, (attached to this document which modifies NY A84500), the manicure/pedicure articles that are comprised of agglomerated pumice is classified under subheading 6804.30.0000, HTSUSA, which provides for other millstones, grindstones, grinding wheels and the like: other: hand sharpening or polishing stones.

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), these rulings will become effective sixty (60) days after their publication in the *Customs Bulletin*.

Dated: September 19, 2005

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 966861
September 19, 2005
CLA-2 RR:CTF:TCM 966861 AML
CATEGORY: Classification
TARIFF NO.: 7013.99.5000

MR. GARY BRUNELL
A. N. DERINGER, INC.
30 West Service Road
Champlain, N.Y. 12919-9703

RE: Glass manicure/pedicure articles; HQ 085886 and NY 834656 revoked

DEAR MR. BRUNELL:

This is in regard to Headquarters Ruling Letter ("HQ") 085886, dated February 22, 1990, and New York Ruling Letter ("NY") 834656, dated January 17, 1989, issued to you on behalf Crabtree & Evelyn, concerning the tariff classification of pumice-like manicure/pedicure "stones" comprised of foamed glass under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). HQ 085886, which affirmed classification of the articles under heading 3307, HTSUS (set forth below), was issued in response to your request for reconsideration of NY 834656. We have reconsidered the classification decisions made in HQ 085886 and NY 834656 and determined that they are incorrect. This ruling sets forth the proper classification of the foamed glass manicure/pedicure articles.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057, 2186 (1993)), notice of the proposed revocations was published on August 10, 2005, in Vol. 39, No. 33 of the *Customs Bulletin*. No comments were received in response to the notice.

FACTS:

We described the articles in HQ 085886 as follows:

The subject merchandise is described as a pink, heart-shaped, pumice-like "stone." Based on a U.S. Customs Service laboratory report, we have determined that the subject merchandise consists of foamed glass. Moreover, the importer has stated in his submissions that the sample article is not agglomerated. The sample is packaged for sale in a plastic wrapper which is slightly scented to give the product a perfume-like odor. The pumice-like stone is designed to buff off rough or stained skin on the hands or feet.

We further observed in HQ 085886 that:

In New York Ruling Letter 834656, dated January 17, 1989, the pumice-like stone was classified under subheading 3307.90.0000, HTSUSA, which provides for other pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included.

We concluded that, although the articles were composed entirely of foamed glass, they were *ejusdem generis* with the cosmetic or toilet preparations of heading 3307, HTSUS, *i.e.*, the foamed glass “stones” were “toilet article[s] intended to be used in the bath for grooming purposes.” HQ 085886 at p. 2.

ISSUE:

Whether the foamed glass manicure/pedicure articles are classifiable under heading 3304, HTSUS, which provides for: “[b]eauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations”; heading 3307, HTSUS, which provides for “[p]re-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included”; or under heading 7013, HTSUS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)?

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (“GRIs”). GRI 1, HTSUS, provides, in part, that “for legal purposes, classification shall be determined according to 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 GRIs may then be applied. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

The HTSUS provisions under consideration are as follows:

3304	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations:
3304.30.00	Manicure or pedicure preparations
	Other:
	Other:
3304.99.50	Other.
	* * *
3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
3307.90.00	Other.
	* * *

7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
	Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: Other glassware:
7013.99	Other:
	Other:
	Other:
7013.99.50	Valued over \$0.30 but not over \$3 each.

* * *

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also, *United States v. Citroen*, 223 U.S. 407 (1911). The article at issue is a “pumice-like” stone comprised of foamed glass that is shaped like a heart. The article is intended to be used as a manicure/pedicure implement.

The foamed glass article is *prima facie* classifiable in Chapter 70, HTSUSA, which provides for articles of glass (we note that *in Los Angeles Tile Jobbers, Inc. v. United States*, 63 Cust. Ct. 248, C.D. 3904 (1969), the Court stated that “all articles of glass are generally defined as ‘glassware.’” (63 Cust. Ct. at 250 citing *Webster’s Third New International Dictionary* (1968); see also *Webster’s New World Dictionary, Third College Edition*, at 573 (1988), defining “glassware” as “articles made of glass”).

When interpreting and implementing the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. U.S. Customs and Border Protection (“CBP”) believes the ENs should always be consulted. See, T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In accordance with the edicts of GRI 1, we consider the headings which *prima facie* describe the article by name or use. Stones comprised of *bona fide* natural pumice are classified under heading 6804, specifically subheading 6804.30.0000, HTSUSA, which provides for millstones, grindstones, grinding wheels and the like . . . hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives. See NY B88174, dated August 18, 1997, NY H85283, dated September 6, 2001, NY A85730, dated July 24, 1996, NY G86299, dated February 6, 2001 and NY I88832, dated December 4, 2002. Both the requester and CBP acknowledged when the subject rulings were issued that the articles were neither natural pumice nor agglomerated stone. In this regard, the ENs to Chapter 68 provide that “glass and glassware, including articles of glass-ceramics, fused quartz or other fused silica, are classified in Chapter 70.” Therefore, we conclude that the articles cannot be classified under heading 6804, HTSUS.

We next consider whether the articles should remain classified within Chapter 33 as manicure and pedicure preparations under heading 3304,

HTSUS, or whether the articles are classifiable under heading 3307, HTSUS, as described above. Note 3 to Chapter 33 provides that:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use.

Note 4 to Chapter 33 provides that:

The expression “perfumery, cosmetic or toilet preparations” in heading 3307 applies, *inter alia*, to the following products: scented sachets; odoriferous preparations which operate by burning; perfumed papers and papers impregnated or coated with cosmetics; contact lens or artificial eye solutions; wadding, felt and nonwovens, impregnated, coated or covered with perfume or cosmetics; animal toilet preparations.

The General ENs to Chapter 33 provide, in pertinent part, that:

Headings 33.03 to 33.07 include products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use (see Note 3 to this Chapter).

The products of headings 33.03 to 33.07 remain in these headings whether or not they contain subsidiary pharmaceutical or disinfectant constituents, or are held out as having subsidiary therapeutic or prophylactic value (see Note 1 (d) to Chapter 30)[for informational reference, Note 1(d) to Chapter 30 provides that Chapter 30 does not cover “[p]reparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties.”]. However, prepared room deodorisers remain classified in heading 33.07 even if they have disinfectant properties of more than a subsidiary nature.

Preparations (*e.g.*, varnish) and **unmixed products** (*e.g.*, unperfumed powdered talc, fuller’s earth, acetone, alum) which are suitable for other uses in addition to those described above are classified in these headings **only** when they are:

- (a) In packings of a kind sold to the consumer and put up with labels, literature or other indications that they are for use as perfumery, cosmetic or toilet preparations, or as room deodorisers; or
- (b) Put up in a form clearly specialised to such use (*e.g.*, nail varnish put up in small bottles furnished with the brush required for applying the varnish)[bold emphasis in original].

* * *

Heading 3304, HTSUS, contains a provision for manicure and pedicure preparations. The ENs to heading 3304 provide the following guidance in regard to the preparations classifiable thereunder:

(B) MANICURE OR PEDICURE PREPARATIONS

This part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for use in manicure or pedicure.

The heading does not cover:

- (a) Medicinal preparations used to treat certain skin complaints, *e.g.*, creams for the treatment of eczema (heading 30.03 or 30.04).
- (b) Foot deodorants and preparations for treating nails or claws on animals (heading 33.07).

The ENs to heading 3307 provide, in pertinent part, that:

(I) **Pre-shave, shaving or after-shave preparations**, such as shaving creams and foams containing soaps or other organic surface-active agents (see Note 1 (c) to Chapter 34); “after-shave” lotions, alum blocks and styptic pencils.

(II) **Personal (body) deodorants and antiperspirants**.

(III) Bath preparations, such as **perfumed bath salts and preparations for foam baths** whether or not containing soap or other organic surface-active agents (see Note 1 (c) to Chapter 34).

(IV) Preparations for perfuming or deodorising rooms, including odoriferous preparations used during religious rites.

* * *

(V) **Other products**, such as:

- (1) **Depilatories** [hair removal products].
- (2) **Scented sachets containing parts of aromatic plants** used for perfuming linen cupboards.
- (3) **Perfumed papers and papers impregnated or coated with cosmetics**.
- (4) **Contact lens or artificial eye solutions . . .**
- (5) **Wadding, felt and nonwovens** impregnated, coated or covered with perfume or cosmetics.
- (6) **Animal toilet preparations**, such as dog shampoos, and plumage-improving washes for birds [bold emphasis in original].

At GRI 1, the article composed of foamed cellular glass, its stated purpose being a manicure/pedicure implement, is not, *prima facie*, classifiable under either heading 3304 or 3307, HTSUS. None of the substances contemplated in the respective headings or ENs are comprised of glass in any form, but rather are composed of creams, oils, lotions, vinegars, powders, paper, scented plant matter and the like. The article at issue is solid and composed of glass. It is neither perfumed nor agglomerated. (We are cognizant that the article is packaged in a scented, plastic container that causes the scent to permeate the foamed glass. However, we do not consider the article itself to be scented or perfumed for tariff purposes, especially when contrasted with the exemplars in the heading and ENs.) Given these characteristics, we conclude that the foamed glass “stone” or implement cannot be construed to be a “preparation.”

In HQ 960964, dated August 17, 1998, in classifying a callus remover under heading 8214, HTSUS, we made the following conclusions concerning the classification of cosmetics:

EN 33.04(B) covering manicure or pedicure preparations states that “[t]his part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for use in manicure or pedicure.” The term “preparation” is not defined in the HTSUS or the ENs. However, Webster’s New World Dictionary (3d edition) defines a “prepa-

ration” as “something prepared for a special purpose, as a medicine, cosmetic, condiment, etc.” Manufactured implements and tools are notably absent from this list. Also, the ENs list no type of manufactured implement or tool as being encompassed by heading 3304, HTSUS. Rather, they describe polishes, varnishes and removers which are akin to salves, lotions or creams.

The callus remover at issue here is a manufactured good consisting of a one-piece plastic handle and head frame with two surfaces, one abrasive and one with an attached metal grater. As such, this merchandise is clearly not among the universe of “preparations” classified in heading 3304, HTSUS. HQ 960964 at p. 3.

The foamed glass article is a solid article of manufacture as opposed to a formulation or preparation. A single constituent material was worked to create a distinct article. Thus, while the glass article at issue may be used for manicure or pedicure purposes, we find that the glass article does not constitute a cosmetic preparation (as it is comprised of a single, solid ingredient) and therefore cannot be classified under either heading 3304 or 3307, HTSUS. The article at issue is akin to the callous remover classified in HQ 960964, set forth above, as it is an implement that yields a cosmetic effect, rather than constituting a cosmetic preparation in and of itself.

The article in question, upon importation, is an implement for removing, smoothing or abrading rough or dead skin from the hands or feet. The article, by composition, is *prima facie* classifiable as a glass article under heading 7013, HTSUS.

Heading 7013, HTSUS, provides for “glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018).” The CIT has stated that the canon of construction *ejusdem generis*, which means literally, “of the same class or kind,” teaches that “where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States* (“*Nissho*”), 10 CIT 154, 156 (1986). The CIT further stated in *Nissho* that “[a]s applicable to customs classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Nissho*, p. 157. Reasonable paraphrasing of the goods enumerated in the superior heading 7013 (of a kind used for table, kitchen, toilet, office, indoor decoration or *similar purposes*) is to describe those articles as household or toilet articles. “The general word or phrase is held to refer to things of the same kind as those specified.” *Sports Graphics, Inc. v. United States*, 24 Fed. 3d 1390, 1392 (Fed. Cir. 1994).

We find that the foamed glass article is a household or toilet article of glass, classified under heading 7013, HTSUS.

HOLDING:

The foamed glass manicure/pedicure articles are classified under sub-heading 7013.99.5000, HTSUSA, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): other glassware: other: other: valued over \$0.30 but not over \$3 each. The 2005 general, column 1 duty rate is 30% *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 on the World Wide Web at *www.usitc.gov*.

EFFECT ON OTHER RULINGS:

HQ 085866 and NY 834656 are revoked. In accordance with 19 U.S.C. § 1625 (c)(2), this ruling will become effective sixty (60) days after its publication in the *Customs Bulletin*.

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

cc: National Commodity Specialist Division
NIS Bunin
NIS Joseph

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 966867
September 19, 2005
CLA-2 RR:CTF:TCM 966867 AML
CATEGORY: Classification
TARIFF NO.: 3924.90.5500; 7013.99.5000

MR. EDWARD J. MURRAY
ALLIED OF CHICAGO, INC.
190 Carpenter Avenue
Wheeling, IL 60090

RE: Skin abrasive articles; HQ 086282 and NY 831549 revoked

DEAR MR. MURRAY:

This is in regard to Headquarters Ruling Letter ("HQ") 086282, dated May 7, 1990, and New York Ruling Letter ("NY") 831549, dated September 20, 1988, issued to you concerning the tariff classification of pumice-like manicure/ pedicure articles composed of glass or plastic under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). HQ 086282, which classified the articles under heading 3304, HTSUS, was issued in response to your request for reconsideration of NY 831549. We have reconsidered the classification decisions made in HQ 086282 and NY 831549 and determined that they are incorrect. This ruling sets forth the proper classification of the glass or plastic manicure/pedicure articles.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057, 2186 (1993)), notice of the proposed revocations was published on August 10, 2005, in Vol. 39, No. 33 of the *Customs Bulletin*. No comments were received in response to the notice.

FACTS:

We described the articles in HQ 086282 as follows:

The submitted samples include items L167, L168, L169, 1000R, and 1036R. These products are used to erode or rub away dead skin cells on the hands and feet.

Items L167 (fish shaped), L168 (foot shaped), and L169 (heart shaped) consist of glass. Items 1000R and 1036R (both rectangular blocks) consist of plastic (polyurethane resin). Although these products are called “pumice,” they do not contain pumice or any other stone. HQ 086282 continues:

The Explanatory Note to Heading 3304 makes no mention of skin care abrasives such as the items in issue. Nonetheless, correlative language does appear in the Explanatory Notes which accompany Heading 6804. The Explanatory Note to Heading 6804 indicates that that heading (which provides for hand-held sharpening or polishing stones) does not include “[p]erfumed pumice stones put up in blocks, tablets or similar prepared forms of heading 33.04.”

In affirming NY 831549, we concluded that:

While the subject articles are neither perfumed nor made from pumice, they perform the same function as the perfumed pumice blocks deemed classifiable in Heading 3304. Accordingly, skin abrasive articles of glass or plastic are classifiable in subheading 3304.99.00, HTSUSA. HQ 086282 at p. 2.

ISSUE:

Whether the glass or plastic “pumice” articles for manicure/pedicure purposes are classifiable under heading 3304, HTSUS, which provides for: “[b]eauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations”; under heading 3307, HTSUS, which provides for “pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included”; heading 3924, HTSUS, which provides for, among other things, other household articles and toilet articles, of plastics; heading 6804, HTSUS, which provides for, among other things, natural or agglomerated grindstones and polishing stones; or under subheading 7013, HTSUS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)?

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (“GRIs”). GRI 1, HTSUS, provides, in part, that “for legal purposes, classification shall be determined according to 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 GRIs may then be applied. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

The HTSUS provisions under consideration are as follows:

- 3304 Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sun-screen or sun tan preparations; manicure or pedicure preparations:
 - 3304.30.00 Manicure or pedicure preparations
 - Other:
 - Other:
 - 3304.99.50 Other.
 - * * *

- 3307 Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
 - 3307.90.00 Other.
 - * * *

- 3924 Tableware, kitchenware, other household articles and toilet articles, of plastics: toilet articles, of plastics:
 - 3924.90 Other:
 - 3924.90.55 Other.
 - * * *

- 6804 Millstones, grindstones, grinding wheels and the like, without frameworks, for grinding, sharpening, polishing, trueing or cutting, hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics, with or without parts of other materials:
 - Other millstones, grindstones, grinding wheels and the like:
 - Other:
 - 6804.30.00 Hand sharpening or polishing stones.
 - * * *

- 7013 Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
 - Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics:
 - Other glassware:

7013.99 Other:

Other:

Other:

7013.99.50 Valued over \$0.30 but not over \$3 each.

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also, *United States v. Citroen*, 223 U.S. 407 (1911). The manicure/ pedicure articles composed of glass or plastic in various shapes and colors are “pumice-like” and are intended to be used as implements to remove rough or dead skin from the hands or feet.

The glass articles are *prima facie* classifiable in Chapter 70, HTSUSA, which provides for articles of glass (we note that in *Los Angeles Tile Jobbers, Inc. v. United States*, 63 Cust. Ct. 248, C.D. 3904 (1969), the Court stated that “all articles of glass are generally defined as ‘glassware.’” (63 Cust. Ct. at 250 citing *Webster’s Third New International Dictionary* (1968); see also *Webster’s New World Dictionary, Third College Edition*, at 573 (1988), defining “glassware” as “articles made of glass”).

Similarly, the articles of plastic are *prima facie* classifiable in Chapter 39, HTSUS, which provides for articles of plastics.

When interpreting and implementing the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. U.S. Customs and Border Protection (“CBP”) believes the ENs should always be consulted. See, T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In accordance with the edicts of GRI 1, we consider the headings which *prima facie* describe the article by name or use. Stones comprised of *bona fide* natural pumice are classified under heading 6804, specifically subheading 6804.30.0000, HTSUSA, which provides for millstones, grindstones, grinding wheels and the like . . . hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics with or without parts of other materials: hand sharpening or polishing stones. See NY B88174, dated August 18, 1997, NY H85283, dated September 6, 2001, NY A85730, dated July 24, 1996, NY G86299, dated February 6, 2001 and NY I88832, dated December 4, 2002. Both the requester and CBP acknowledged when the subject rulings were issued that the articles are neither natural pumice nor agglomerated stone. Additionally, the ENs to Chapter 68 provide that “glass and glassware, including articles of glass-ceramics, fused quartz or other fused silica, are classified in Chapter 70.” Therefore, we conclude that the articles cannot be classified under heading 6804, HTSUS.

We next consider whether the articles should remain classified within Chapter 33 as manicure and pedicure preparations under heading 3304, HTSUS, or whether the articles are classifiable under heading 3307, HTSUS as described above. Note 3 to Chapter 33 provides that:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential

oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use.

Note 4 to Chapter 33 provides that:

The expression “perfumery, cosmetic or toilet preparations” in heading 3307 applies, *inter alia*, to the following products: scented sachets; odoriferous preparations which operate by burning; perfumed papers and papers impregnated or coated with cosmetics; contact lens or artificial eye solutions; wadding, felt and nonwovens, impregnated, coated or covered with perfume or cosmetics; animal toilet preparations.

The General ENs to Chapter 33 provide, in pertinent part, that:

Headings 33.03 to 33.07 include products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use (see Note 3 to this Chapter).

The products of headings 33.03 to 33.07 remain in these headings whether or not they contain subsidiary pharmaceutical or disinfectant constituents, or are held out as having subsidiary therapeutic or prophylactic value (see Note 1 (d) to Chapter 30)[for informational reference, Note 1(d) to Chapter 30 provides that Chapter 30 does not cover “[p]reparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties.”]. However, prepared room deodorisers remain classified in heading 33.07 even if they have disinfectant properties of more than a subsidiary nature.

Preparations (*e.g.*, varnish) and **unmixed products** (*e.g.*, unperfumed powdered talc, fuller’s earth, acetone, alum) which are suitable for other uses in addition to those described above are classified in these headings **only** when they are:

- (a) In packings of a kind sold to the consumer and put up with labels, literature or other indications that they are for use as perfumery, cosmetic or toilet preparations, or as room deodorisers; or
- (b) Put up in a form clearly specialised to such use (*e.g.*, nail varnish put up in small bottles furnished with the brush required for applying the varnish)[bold emphasis in original].

* * *

Heading 3304, HTSUS, contains a provision for manicure and pedicure preparations. The ENs to heading 3304 provide the following guidance in regard to the preparations classifiable thereunder:

(B) MANICURE OR PEDICURE PREPARATIONS

This part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for use in manicure or pedicure.

The heading does not cover:

- (a) Medicinal preparations used to treat certain skin complaints, *e.g.*, creams for the treatment of eczema (heading 30.03 or 30.04).
- (b) Foot deodorants and preparations for treating nails or claws on animals (heading 33.07).

The ENs to heading 3307 provide, in pertinent part, that:

(I) **Pre-shave, shaving or after-shave preparations**, such as shaving creams and foams containing soaps or other organic surface-active agents (see Note 1 (c) to Chapter 34); “after-shave” lotions, alum blocks and styptic pencils.

(II) **Personal (body) deodorants and antiperspirants**.

(III) Bath preparations, such as **perfumed bath salts and preparations for foam baths**, whether or not containing soap or other organic surface-active agents (see Note 1 (c) to Chapter 34).

(IV) Preparations for perfuming or deodorising rooms, including odoriferous preparations used during religious rites.

* * *

(V) **Other products**, such as:

- (1) **Depilatories** [hair removal products].
- (2) **Scented sachets containing parts of aromatic plants** used for perfuming linen cupboards.
- (3) **Perfumed papers and papers impregnated or coated with cosmetics**.
- (4) **Contact lens or artificial eye solutions** . . .
- (5) **Wadding, felt and nonwovens** impregnated, coated or covered with perfume or cosmetics.
- (6) **Animal toilet preparations**, such as dog shampoos, and plumage-improving washes for birds [bold emphasis in original].

At GRI 1, the articles composed of glass or plastics, their stated purpose being manicure/pedicure implements, are not, *prima facie*, classifiable under either heading 3304 or 3307, HTSUS. None of the substances contemplated in the respective headings or ENs are comprised of glass or plastics in any form, but rather are composed of creams, oils, lotions, vinegars, powders, paper, scented plant matter and the like. The articles at issue are solid and composed of glass or plastics. They are neither perfumed nor agglomerated. We conclude that the glass or plastic “pumice” cannot be construed to be a “preparation.”

In HQ 960964, dated August 17, 1998, in classifying a callus remover under heading 8214, HTSUS, we made the following conclusions concerning the classification of cosmetics:

EN 33.04(B) covering manicure or pedicure preparations states that “(t)his part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for use in manicure or pedicure.” The term “preparation” is not defined in the HTSUS or the ENs. However, Webster’s New World Dictionary (3d edition) defines a “preparation” as “something prepared for a special purpose, as a medicine, cosmetic, condiment, etc.” Manufactured implements and tools are notably absent from this list. Also, the ENs list no type of manufactured implement or tool as being encompassed by heading 3304, HTSUS. Rather, they describe polishes, varnishes and removers which are akin to salves, lotions or creams.

The callus remover at issue here is a manufactured good consisting of a one-piece plastic handle and head frame with two surfaces, one abrasive and one with an attached metal grater. As such, this merchandise

is clearly not among the universe of “preparations” classified in heading 3304, HTSUS. HQ 960964 at p. 3.

Neither the CIT nor the CAFC have rendered a decision interpreting the term “preparations” vis-à-vis heading 3304 or 3307, HTSUS. *Cf. Mita Copystar v. United States*, 17 CIT 374 (CIT 1993), which concerned the definition of the term “chemical preparations”; *United States v. P. John Hanrahan, Inc.* 45 C.C.P.A. 120, C.A.D. 684, 1958, in which the court analyzed the definition of the term “preparation” as fit for human consumption; *Nestle Refrigerated Food Co. v. United States*, 18 CIT 661 (CIT 1994), in which the court, in determining the tariff classification a tomato product, recited the rules (*i.e.*, consulted lexicographic sources, etc.) concerning the definition of the term “preparation.”

While the term “preparation” has been broadly interpreted as it appears in other chapters of the tariff schedule, we conclude that further analysis of the term for purposes of chapter 33 is required. See *Avenues in Leather, Inc. v. United States*, 317 F.3d 1399, CAFC 2003, in which the Court of Appeals for the Federal Circuit acknowledged, citing *United States v. Stone & Downer Co.*, 274 U.S. 225, 71 L. Ed. 1013, 47 S. Ct. 616, Treas. Dec. 42211 (1927), that “the doctrine of issue preclusion does not hold sway over classification disputes under U.S. Customs law.”

In the absence of a contrary legislative intent, tariff terms that are not defined in an HTSUS section or chapter note, or clearly described in an EN, are construed in accordance with their common and commercial meanings, which are presumed to be the same. *Nippon Kogasku (USA) Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Dictionaries, scientific authorities and other reliable lexicographic sources are often consulted; and, where the term under consideration is technical in nature, appropriate technical sources of information should be consulted. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

The following electronic sources provide the following definitions of the term “preparations”:

Webster’s English Dictionary (www.math.chalmers.se) provides the following definition:

1: the action or process of making something ready for use or service or of getting ready for some occasion, test, or duty 2: a state of being prepared: READINESS 3: a preparatory act or measure 4: something that is prepared; specif : a medicinal substance fitted for use.

“Hyperdic.net” provides the following definition and examples:

Meaning: A substance prepared according to a formula.

Broader: compound

chemical compound

Synonyms: formulation

“Hyperdictionary.com” provides a similar definition, *i.e.*, a substance prepared according to a formula, as well as the following elaboration:

4. That which is prepared, made, or compounded by a certain process or for a particular purpose; a combination.

Specifically:

(a) Any medicinal substance fitted for use.

- (b) Anything treated for preservation or examination as a specimen.
- (c) Something prepared for use in cookery.

See similarly, "define.ansme.com".

At Dorland's Medical Dictionary online (see "mercksource.com"), the following definitions and examples are provided:

preparation 1. the act or process of making ready. 2. a medicine made ready for use. 3. an anatomic or pathologic specimen made ready and preserved for study.

At "thefreedictionary.com" the following definitions are provided:

preparation - a substance prepared according to a formula
cleanser, cleansing agent - a preparation used in cleaning something

chemical compound, compound - (chemistry) a substance formed by chemical union of two or more elements or ingredients in definite proportion by weight

polish - a preparation used in polishing

See also HQ 965997, dated December 19, 2002.

We find from the above-cited rulings and lexicographic sources that a preparation in Chapter 33 of the tariff connotes a mixture of two or more liquid or colloidal substances compounded together for a specific use. All of the exemplars provided by the ENs to headings 3304 and 3307 comply with this basic definition, given that all of the substances are mixtures or compounds comprised of at least two distinct component or constituent materials.

The glass or plastic articles are products of manufacture as opposed to a formulation or preparation. A single constituent material was worked to create a distinct article. Thus, while the glass or plastic articles at issue may be used for manicure or pedicure purposes, we find that the articles do not constitute a preparation and therefore cannot be classified under either heading 3304 or 3307, HTSUS. The articles at issue are akin to the callous remover classified in HQ 960964, set forth above, as they are implements that yield a cosmetic effect, rather than constituting a cosmetic preparation in and of themselves.

The glass articles in question, upon importation, are implements for removing, smoothing or abrading rough or dead skin from the hands or feet. The articles, by composition, are *prima facie* classifiable as glass articles under heading 7013, HTSUS.

Heading 7013, HTSUS, provides for "glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)." The CIT has stated that the canon of construction *ejusdem generis*, which means literally, "of the same class or kind," teaches that "where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described." *Nissho-Iwai American Corp. v. United States* ("Nissho"), 10 CIT 154, 156 (1986). The CIT further stated in *Nissho* that "[a]s applicable to customs classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms." *Nissho*, p. 157. Reasonable paraphrasing of the goods enumerated in the superior heading 7013 (of a kind used for table, kitchen, toi-

let, office, indoor decoration *or similar purposes*) is to describe those articles as household or toilet articles. "The general word or phrase is held to refer to things of the same kind as those specified." *Sports Graphics, Inc. v. United States* 24 Fed. 3d 1390, 1392 (Fed. Cir. 1994).

We find that the glass articles are household or toilet articles of glass, classified under heading 7013, HTSUS.

Similarly, the plastic articles for personal use are *prima facie* classifiable as toilet articles of plastics under heading 3924, HTSUS. The ENs to heading 3924, HTSUS, provide, in relevant part that:

This heading covers the following articles of plastics:

* * *

(C) Other household articles such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, luncheon boxes, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

(D) Toilet articles (whether for domestic or non-domestic use) such as toilet sets (ewers, bowls, etc.), sanitary pails, bed pans, urinals, chamber-pots, spittoons, douche cans, eye baths; soap dishes, towel rails, tooth-brush holders, toilet paper holders, towel hooks and similar articles for bathrooms, toilets or kitchens, not intended for permanent installation in or on walls.

The plastic articles for personal use are classified under heading 3924, HTSUS.

HOLDING:

The glass manicure/pedicure articles (items L167 (fish shaped), L168 (foot shaped), and L169 (heart shaped)) are classified under subheading 7013.99.5000, HTSUSA, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): other glassware: other: other: valued over \$0.30 but not over \$3 each. The 2005 general, column 1 duty rate is 30% *ad valorem*.

The plastic articles (items 1000R and 1036R) are classified under subheading 3924.90.5500, HTSUSA, which provides for tableware, kitchenware, other household articles and toilet articles, of plastics: toilet articles, of plastics: other: other. The 2005 general, column 1 duty rate is 3.4% *ad valorem*.

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

EFFECT ON OTHER RULINGS:

HQ 086282 and NY 831549 are revoked. In accordance with 19 U.S.C. §1625 (c)(2), this ruling will become effective sixty (60) days after its publication in the *Customs Bulletin*.

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

cc: National Commodity Specialist Division
 NIS Bunin
 NIS Joseph

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 966876

September 19, 2005

CLA-2 RR:CTF:TCM 966876 AML

CATEGORY: Classification**TARIFF NO.:** 3924.90.5500; 6804.30.0000; 7013.99.5000

MS. HELEN NEWELL
POLARDREAMS INTERNATIONAL LTD.
602 W. Burlington
Fairfield, IA 52556

RE: Skin abrasive articles; NYs D84445, D84446, D84447, F85435, D80071,
and H80586 modified

DEAR MS. NEWELL:

This is in regard to New York Ruling Letters ("NYs") D84445, D84446, D84447, dated November 25, 1998; NY F85435, dated April 17, 2000; NY D80071, dated August 5, 1998 and NY H80586, dated May 22, 2001, issued to you concerning the tariff classification of various bath and body gift sets containing, among other things, either natural pumice stones or pumice-like manicure/pedicure articles composed of synthetic or agglomerated "pumice" under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). We have reconsidered the classification decisions made in the aforementioned rulings and have determined that they are incorrect as they pertain to the articles composed of natural or synthetic pumice. This ruling sets forth the proper classification of the manicure/pedicure articles.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057, 2186 (1993)), notice of the proposed modifications was published on August 10, 2005, in Vol. 39, No. 33 of the *Customs Bulletin*. No comments were received in response to the notice.

FACTS:

We described the relevant articles in NY D84445, D84446 and D84447 as "synthetic pumice stone" and classified those articles under subheading 3304.99.50, HTSUS, which provides for beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations; other. We described the pertinent article in NY F85435 as a synthetic round pumice body smoother and classified that article under subheading 3304.99.50, HTSUS.

We described the relevant article in NY D80071 as a "foot pumice stone" and classified it under subheading 3304.99.50, HTSUS [from this description we infer that the article is comprised of natural pumice]. We described the pertinent article in NY H80586 as a synthetic foot pumice stone and classified it under subheading 3304.99.50, HTSUS.

ISSUE:

Whether the natural, glass or plastic “pumice” articles for manicure/ pedicure purposes are classifiable under heading 3304, HTSUS, which provides for: “[b]eauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations”; under heading 3307, HTSUS, which provides for “pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included”; heading 3924, HTSUS, which provides for, among other things, other household articles and toilet articles, of plastics; heading 6804, HTSUS, which provides for, among other things, natural or agglomerated grindstones and polishing stones; or under subheading 7013, HTSUS, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018)?

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (“GRIs”). GRI 1, HTSUS, provides, in part, that “for legal purposes, classification shall be determined according to 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 GRIs may then be applied. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

The HTSUS provisions under consideration are as follows:

3304	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations:
3304.30.00	Manicure or pedicure preparations
	Other:
	Other:
3304.99.50	Other.
	* * *
3307	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
3307.90.00	Other.
	* * *
3924	Tableware, kitchenware, other household articles and toilet articles, of plastics: toilet articles, of plastics:
3924.90	Other:

3924.90.55	Other. * * *
6804	Millstones, grindstones, grinding wheels and the like, without frameworks, for grinding, sharpening, polishing, trueing or cutting, hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics, with or without parts of other materials: Other millstones, grindstones, grinding wheels and the like: Other:
6804.30.00	Hand sharpening or polishing stones. * * *
7013	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics: Other glassware:
7013.99	Other: Other: Other:
7013.99.50	Valued over \$0.30 but not over \$3 each. * * *

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also, *United States v. Citroen*, 223 U.S. 407 (1911). The articles at issue are either natural pumice stone or “pumice-like” articles comprised of glass or plastic in various shapes and colors. The articles are intended to be used as manicure/pedicure implements.

The glass articles are *prima facie* classifiable in Chapter 70, HTSUS, which provides for articles of glass (we note that in *Los Angeles Tile Jobbers, Inc. v. United States*, 63 Cust. Ct. 248, C.D. 3904 (1969), the Court stated that “all articles of glass are generally defined as ‘glassware.’” (63 Cust. Ct. at 250 citing *Webster’s Third New International Dictionary* (1968); see also *Webster’s New World Dictionary, Third College Edition*, at 573 (1988), defining “glassware” as “articles made of glass”).

Similarly, the articles of plastic are *prima facie* classifiable in Chapter 39, HTSUS, which provides for articles of plastics.

Likewise, the articles comprised of natural pumice are *prima facie* classifiable under heading 6804, HTSUS.

When interpreting and implementing the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may

be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. U.S. Customs and Border Protection (“CBP”) believes the ENs should always be consulted. See, T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In accordance with the edicts of GRI 1, we consider the headings which *prima facie* describe the article by name or use. Stones comprised of actual, bona fide, natural pumice are classified under heading 6804, specifically subheading 6804.30.0000, HTSUSA, which provides for millstones, grindstones, grinding wheels and the like . . . hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics with or without parts of other materials: hand sharpening or polishing stones. See NY B88174, dated August 18, 1997, NY H85283, dated September 6, 2001, NY A85730, dated July 24, 1996, NY G86299, dated February 6, 2001 and NY I88832, dated December 4, 2002. See also the ENs to heading 6804: certain stones (*e.g.*, pumice) are also used for toilet, manicure and pedicure purposes; the ENs provide further that perfumed pumice stone put up in blocks, tablets or similar prepared forms are classified in heading 3304, HTSUS. Both the requester and CBP acknowledged when the subject rulings were issued that, with the exception of the foot pumice stone in NY D80071, the articles are neither natural pumice nor agglomerated stone. Additionally, the ENs to Chapter 68 provide that “glass and glassware, including articles of glass-ceramics, fused quartz or other fused silica, are classified in Chapter 70.” Therefore, we conclude that only the foot pumice stone in NY D80071 is *prima facie* classifiable under heading 6804, HTSUS. Given the description of the foot pumice stone in NY D80071, we conclude that it is comprised of actual, bona fide, natural pumice, classified under heading 6804, HTSUS. The remaining articles cannot be so classified.

The composition of the synthetic pumice body smoother in F85435, issued in April 2000 is unknown. The file for that ruling was lost on September 11, 2001. Given the description of the article as being “synthetic,” we set forth the possible classification below, excluding heading 6804, HTSUS, as discussed above.

We next consider whether the articles should remain classified within Chapter 33 as manicure and pedicure preparations under heading 3304, HTSUS, or whether the articles are classifiable under heading 3307, HTSUS. Note 3 to Chapter 33 provides that:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use.

Note 4 to Chapter 33 provides that:

The expression “perfumery, cosmetic or toilet preparations” in heading 3307 applies, *inter alia*, to the following products: scented sachets; odoriferous preparations which operate by burning; perfumed papers and papers impregnated or coated with cosmetics; contact lens or artificial eye solutions; wadding, felt and nonwovens, impregnated, coated or covered with perfume or cosmetics; animal toilet preparations.

The General ENs to Chapter 33 provide, in pertinent part, that:

Headings 33.03 to 33.07 include products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use (see Note 3 to this Chapter).

The products of headings 33.03 to 33.07 remain in these headings whether or not they contain subsidiary pharmaceutical or disinfectant constituents, or are held out as having subsidiary therapeutic or prophylactic value (see Note 1 (d) to Chapter 30) [for informational reference, Note 1(d) to Chapter 30 provides that Chapter 30 does not cover “[p]reparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties.”]. However, prepared room deodorisers remain classified in heading 33.07 even if they have disinfectant properties of more than a subsidiary nature.

Preparations (*e.g.*, varnish) and **unmixed products** (*e.g.*, unperfumed powdered talc, fuller’s earth, acetone, alum) which are suitable for other uses in addition to those described above are classified in these headings **only** when they are:

- (a) In packings of a kind sold to the consumer and put up with labels, literature or other indications that they are for use as perfumery, cosmetic or toilet preparations, or as room deodorisers; or
- (b) Put up in a form clearly specialised to such use (*e.g.*, nail varnish put up in small bottles furnished with the brush required for applying the varnish). [Bold emphasis in original.]

* * *

Heading 3304, HTSUS, contains a provision for manicure and pedicure preparations. The ENs to heading 3304 provide the following guidance in regard to the preparations classifiable thereunder:

(B) MANICURE OR PEDICURE PREPARATIONS

This part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for use in manicure or pedicure.

The heading **does not cover**:

- (a) Medicinal preparations used to treat certain skin complaints, *e.g.*, creams for the treatment of eczema (**heading 30.03 or 30.04**).
- (b) Foot deodorants and preparations for treating nails or claws on animals (**heading 33.07**) [bold emphasis in original].

The ENs to heading 3307 provide, in pertinent part, that:

This heading covers:

- (I) **Pre-shave, shaving or after-shave preparations**, such as shaving creams and foams containing soaps or other organic surface-active agents (see Note 1 (c) to Chapter 34); “after-shave” lotions, alum blocks and styptic pencils.
- (II) **Personal (body) deodorants and antiperspirants**.
- (III) Bath preparations, such as **perfumed bath salts and preparations for foam baths**, whether or not containing soap or other organic surface-active agents (see Note 1 (c) to Chapter 34).

(IV) Preparations for perfuming or deodorising rooms, including odorous preparations used during religious rites.

* * *

(V) **Other products**, such as:

- (1) **Depilatories** [hair removal products].
- (2) **Scented sachets containing parts of aromatic plants** used for perfuming linen cupboards.
- (3) **Perfumed papers and papers impregnated or coated with cosmetics.**
- (4) **Contact lens or artificial eye solutions . . .**
- (5) **Wadding, felt and nonwovens** impregnated, coated or covered with perfume or cosmetics.
- (6) **Animal toilet preparations**, such as dog shampoos, and plumage-improving washes for birds [bold emphasis in original].

At GRI 1, the articles composed of glass or plastics, their stated purpose being manicure/pedicure implements, are not, *prima facie*, classifiable under either heading 3304 or 3307, HTSUS. None of the substances contemplated in the respective headings or ENs are comprised of glass or plastics in any form, but rather are composed of creams, oils, lotions, vinegars, powders, paper, scented plant matter and the like. The articles at issue are solid and composed of glass or plastics. They are neither perfumed nor agglomerated. We conclude that the glass or plastic “pumice” cannot be construed to be a “preparation.”

In HQ 960964, dated August 17, 1998, in classifying a callus remover under heading 8214, HTSUS, we made the following conclusions concerning the classification of cosmetics:

EN 33.04(B) covering manicure or pedicure preparations states that “(t)his part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for use in manicure or pedicure.” The term “preparation” is not defined in the HTSUSA or the ENs. However, *Webster’s New World Dictionary (3d edition)* defines a “preparation” as “something prepared for a special purpose, as a medicine, cosmetic, condiment, etc.” Manufactured implements and tools are notably absent from this list. Also, the ENs list no type of manufactured implement or tool as being encompassed by heading 3304, HTSUS. Rather, they describe polishes, varnishes and removers which are akin to salves, lotions or creams.

The callus remover at issue here is a manufactured good consisting of a one-piece plastic handle and head frame with two surfaces, one abrasive and one with an attached metal grater. As such, this merchandise is clearly not among the universe of “preparations” classified in heading 3304, HTSUS. HQ 960964 at p. 3.

Neither the CIT nor the CAFC has rendered a decision interpreting the term “preparations” vis-à-vis heading 3304 or 3307, HTSUS. And while the term “preparations” has been broadly interpreted as it appears in other chapters of the tariff schedule, we conclude that further analysis of the term for purposes of chapter 33 is required.

In the absence of a contrary legislative intent, tariff terms that are not defined in an HTSUSA section or chapter note, or clearly described in an EN,

are construed in accordance with their common and commercial meanings, which are presumed to be the same. *Nippon Kogasku (USA) Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Dictionaries, scientific authorities and other reliable lexicographic sources are often consulted; and, where the term under consideration is technical in nature, appropriate technical sources of information should be consulted. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

The following electronic sources provide the following definitions of the term “preparations”:

Webster’s English Dictionary (www.math.chalmers.se) provides the following definition:

1: the action or process of making something ready for use or service or of getting ready for some occasion, test, or duty 2: a state of being prepared: READINESS 3: a preparatory act or measure 4: something that is prepared; specifically: a medicinal substance fitted for use.

“Hyperdic.net” provides the following definition and examples:

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4. That which is prepared, made, or compounded by a certain process or for a particular purpose; a combination.

Specifically:

(a) Any medicinal substance fitted for use.

(b) Anything treated for preservation or examination as a specimen.

(c) Something prepared for use in cookery.

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At Dorland’s Medical Dictionary online (see “mercksource.com”), the following definitions and examples are provided:

preparation 1. the act or process of making ready. 2. a medicine made ready for use. 3. an anatomic or pathologic specimen made ready and preserved for study.

At “thefreedictionary.com” the following definitions are provided:

preparation - a substance prepared according to a formula formulation
cleaner, cleanser, cleansing agent - a preparation used in cleaning something

chemical compound, compound - (chemistry) a substance formed by chemical union of two or more elements or ingredients in definite proportion by weight

polish - a preparation used in polishing

See also HQ 965997, dated December 19, 2002.

We find from the above-cited rulings and lexicographic sources that a preparation in Chapter 33 of the tariff denotes a mixture of two or more liquid or colloidal substances compounded together for a specific use. All of the

exemplars provided by the ENs to headings 3304 and 3307 comply with this basic definition, given that all of the substances are mixtures or compounds comprised of at least two distinct component or constituent materials.

The glass or plastic articles are products of manufacture as opposed to a formulation or preparation. A single constituent material was worked to create a distinct article. Thus, while the glass or plastic articles at issue may be used for manicure or pedicure purposes, we find that the articles do not constitute a preparation and therefore cannot be classified under either heading 3304 or 3307, HTSUS. The articles at issue are akin to the callous remover classified in HQ 960964, set forth above, as they are implements that yield a cosmetic effect, rather than constituting a cosmetic preparation in and of themselves.

The glass articles in question, upon importation, are implements for removing, smoothing or abrading rough or dead skin from the hands or feet. The articles, by composition, are *prima facie* classifiable as glass articles under heading 7013, HTSUS.

Heading 7013, HTSUS, provides for “glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018).” The CIT has stated that the canon of construction *ejusdem generis*, which means literally, “of the same class or kind,” teaches that “where particular words of description are followed by general terms, the latter will be regarded as referring to things of a like class with those particularly described.” *Nissho-Iwai American Corp. v. United States* (“*Nissho*”), 10 CIT 154, 156 (1986). The CIT further stated in *Nissho* that “[a]s applicable to customs classification cases, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms.” *Nissho*, p. 157. Reasonable paraphrasing of the goods enumerated in the superior heading 7013 (of a kind used for table, kitchen, toilet, office, indoor decoration or *similar purposes*) is to describe those articles as household or toilet articles. “The general word or phrase is held to refer to things of the same kind as those specified.” *Sports Graphics, Inc. v. United States*, 24 Fed. 3d 1390, 1392 (Fed. Cir. 1994).

We find that the glass articles are household or toilet articles of glass, classified under heading 7013, HTSUS.

Similarly, the plastic articles for personal use are *prima facie* classifiable as toilet articles of plastics under heading 3924, HTSUS. The ENs to heading 3924, HTSUS, provide, in relevant part that:

This heading covers the following articles of plastics:

* * *

(C) Other household articles such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, luncheon boxes, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

(D) Toilet articles (whether for domestic or non-domestic use) such as toilet sets (ewers, bowls, etc.), sanitary pails, bed pans, urinals, chamber-pots, spittoons, douche cans, eye baths; soap dishes, towel rails, tooth-brush holders, toilet paper holders, towel hooks and similar

articles for bathrooms, toilets or kitchens, not intended for permanent installation in or on walls.

The plastic articles for personal use are classified under heading 3924, HTSUS.

The synthetic pumice body smoother in NY F85435 is classified according to the criteria set forth above and holding set forth below: if it is comprised of agglomerated pumice (the possibility of which we are dubious), it is classified under heading 6804, HTSUS; if comprised of glass, it is classified under heading 7013, HTSUS; if comprised of plastic, it is classified under heading 3924, HTSUS.

HOLDING:

The manicure/pedicure article that is comprised of natural pumice; *i.e.*, the foot pumice stone in NY D80071, is classified under subheading 6804.30.0000, HTSUSA, which provides for other millstones, grindstones, grinding wheels and the like: other: hand sharpening or polishing stones. The 2005 general, column 1 duty rate is free.

The glass manicure/pedicure articles are classified under subheading 7013.99.5000, HTSUSA, which provides for glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018): other glassware: other: other: valued over \$0.30 but not over \$3 each. The 2004 general, column 1 duty rate is 30% *ad valorem*.

The plastic articles are classified under subheading 3924.90.5500, HTSUSA, which provides for tableware, kitchenware, other household articles and toilet articles, of plastics: toilet articles, of plastics: other: other. The 2004 general, column 1 duty rate is 3.4% *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 on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NYs D84445, D84446, D84447, F85435, D80071, and H80586 are modified as they pertain to natural or synthetic pumice stones. In accordance with 19 U.S.C. §1625 (c)(2), this ruling will become effective sixty (60) days after its publication in the *Customs Bulletin*.

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

cc: National Commodity Specialist Division
NIS Bunin
NIS Joseph

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 966877
September 19, 2005
CLA-2 RR:CTF:TCM 966877 AML
CATEGORY: Classification
TARIFF NO.: 6804.30.0000

Ms. KIM YOUNG
BDP INTERNATIONAL INC.
2721 Walker Rd. NW
Grand Rapids, MI 49504

RE: Agglomerated "pumice" sponge and stone; NY A84500 modified

DEAR MR. YOUNG:

This is in regard to New York Ruling Letter ("NY") A84500, dated June 21, 1996, issued to you on behalf Meijer, Inc., concerning the tariff classification of, among other things, a "pumice sponge" (Style # 93189 UPC# 0-41250-05813) and agglomerated "pumice stones" (style # 61-K-01; UPC # 41250-62844) composed of polyurethane foam, calcium stearate and calcium carbonate under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). We have reconsidered the classification decision made in NY A84500 and determined that it is incorrect as it pertains to the classification of the agglomerated "pumice sponge" and "pumice stone." This ruling sets forth the proper classification of the agglomerated manicure/pedicure articles.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057, 2186 (1993)), notice of the proposed modification was published on August 10, 2005, in Vol. 39, No. 33 of the *Customs Bulletin*. No comments were received in response to the notice.

FACTS:

We described the relevant articles in NY A84500 as follows:

The "Pumice Sponge" Style # 93189 UPC# 0-41250-05813 and the "Pumice Stone" Style #61-K-01 UPC# 0-41250-62844, are both artificial pumice products composed of polyurethane foam, calcium stearate and calcium carbonate. Both products are used for the removal of rough skin.

We concluded that, although the articles were composed entirely of agglomerated artificial stone, they were classified under heading 3304, specifically subheading 3304.99.5000, HTSUSA, which provides for beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations: other.

ISSUE:

Whether the agglomerated artificial "pumice sponge" and "pumice stone" for manicure/pedicure purposes are classifiable under heading 3304, HTSUS, which provides for beauty or make-up preparations and prepara-

tions for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations; or under heading 6804, HTSUS, which provides for, among other things, natural or agglomerated grindstones and polishing stones?

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (“GRIs”). GRI 1, HTSUS, provides, in part, that “for legal purposes, classification shall be determined according to 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 GRIs may then be applied. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

The HTSUS provisions under consideration are as follows:

3304	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations:
3304.30.00	Manicure or pedicure preparations Other: Other:
3304.99.50	Other. * * *
6804	Millstones, grindstones, grinding wheels and the like, without frameworks, for grinding, sharpening, polishing, truing or cutting, hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics, with or without parts of other materials: Other millstones, grindstones, grinding wheels and the like: Other:
6804.30.00	Hand sharpening or polishing stones. * * *

An article is to be classified according to its condition as imported. See *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also, *United States v. Citroen*, 223 U.S. 407 (1911). The articles at issue are a “pumice-like” stone and “pumice-like” sponge comprised of polyurethane foam, calcium stearate and calcium carbonate. The articles are intended to be used as manicure/pedicure implements.

When interpreting and implementing the HTSUS, the Explanatory Notes (“ENs”) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a

guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. U.S. Customs and Border Protection (“CBP”) believes the ENs should always be consulted. See, T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In accordance with the edicts of GRI 1, we consider the headings which *prima facie* describe the article by name or use. We initially consider whether the articles should remain classified within Chapter 33 as manicure and pedicure preparations under heading 3304, HTSUS. Note 3 to Chapter 33 provides that:

Headings 3303 to 3307 apply, *inter alia*, to products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use.

The General ENs to Chapter 33 provide, in pertinent part, that:

Headings 33.03 to 33.07 include products, whether or not mixed (other than aqueous distillates and aqueous solutions of essential oils), suitable for use as goods of these headings and put up in packings of a kind sold by retail for such use (see Note 3 to this Chapter).

The products of headings 33.03 to 33.07 remain in these headings whether or not they contain subsidiary pharmaceutical or disinfectant constituents, or are held out as having subsidiary therapeutic or prophylactic value (see Note 1 (d) to Chapter 30)[we note, for informational reference, that Note 1(d) to Chapter 30 provides that Chapter 30 does not cover “[p]reparations of headings 3303 to 3307, even if they have therapeutic or prophylactic properties.”]. However, prepared room deodorisers remain classified in heading 33.07 even if they have disinfectant properties of more than a subsidiary nature.

Preparations (*e.g.*, varnish) and **unmixed products** (*e.g.*, unperfumed powdered talc, fuller’s earth, acetone, alum) which are suitable for other uses in addition to those described above are classified in these headings **only** when they are:

- (a) In packings of a kind sold to the consumer and put up with labels, literature or other indications that they are for use as perfumery, cosmetic or toilet preparations, or as room deodorisers; or
- (b) Put up in a form clearly specialised to such use (*e.g.*, nail varnish put up in small bottles furnished with the brush required for applying the varnish)[bold emphasis in original].

* * *

Heading 3304, HTSUS, contains a provision for manicure and pedicure preparations. The ENs to heading 3304 provide the following guidance in regard to the preparations classifiable thereunder:

(B) MANICURE OR PEDICURE PREPARATIONS

This part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for use in manicure or pedicure.

The heading does not cover:

- (a) Medicinal preparations used to treat certain skin complaints, *e.g.*, creams for the treatment of eczema (heading 3003 or 3004).

(b) Foot deodorants and preparations for treating nails or claws on animals (heading 3307).

At GRI 1, the articles composed of agglomerated, artificial stone, their stated purpose being manicure/pedicure implements, are not *prima facie* classifiable under heading 3304, HTSUS. None of the substances contemplated in the superior heading or ENs are comprised of agglomerated artificial stone in any form, but rather are composed of creams, oils, lotions, vinegars, powders, paper, scented plant matter and the like. The articles at issue are solid and composed of plastic binder and stone. However, they are not perfumed (see the EN to heading 6804 which indicates that that heading (which provides for hand-held sharpening or polishing stones) does not include “[p]erfumed pumice stones put up in blocks, tablets or similar prepared forms of heading 3304”). Given these characteristics, we conclude that neither the “stone” nor “sponge” can be construed to be a “preparation.”

In HQ 960964, dated August 17, 1998, in classifying a callus remover under heading 8214, HTSUS, we made the following conclusions concerning the classification of cosmetics:

EN 33.04(B) covering manicure or pedicure preparations states that “(t)his part covers nail polishes, nail varnishes, nail varnish removers, cuticle removers and other preparations for use in manicure or pedicure.” The term “preparation” is not defined in the HTSUSA or the ENs. However, *Webster’s New World Dictionary (3d edition)* defines a “preparation” as “something prepared for a special purpose, as a medicine, cosmetic, condiment, etc.” Manufactured implements and tools are notably absent from this list. Also, the ENs list no type of manufactured implement or tool as being encompassed by heading 3304, HTSUSA. Rather, they describe polishes, varnishes and removers which are akin to salves, lotions or creams.

The callus remover at issue here is a manufactured good consisting of a one-piece plastic handle and head frame with two surfaces, one abrasive and one with an attached metal grater. As such, this merchandise is clearly not among the universe of “preparations” classified in heading 3304, HTSUS.

Neither the CIT nor the CAFC have rendered a decision interpreting the term “preparations” vis-à-vis heading 3304 or 3307, HTSUS. *Cf. Mita Copystar v. United States*, 17 CIT 374 (CIT 1993), which concerned the definition of the term “chemical preparations”; *United States v. P. John Hanrahan, Inc.*, 45 C.C.P.A. 120, C.A.D. 684, 1958, in which the court analyzed the definition of the term “preparation” as fit for human consumption; *Nestle Refrigerated Food Co. v. United States*, 18 CIT 661 (CIT 1994), in which the court, in determining the tariff classification a tomato product, recited the rules (*i.e.*, consulted lexicographic sources, etc.) concerning the connotation of the term “preparation.”

While the term “preparation” has been broadly interpreted as it appears in other chapters of the tariff schedule, we conclude that further analysis of the term for purposes of chapter 33 is required. See *Avenues in Leather, Inc. v. United States*, 317 F.3d 1399, CAFC 2003, in which the Court of Appeals for the Federal Circuit acknowledged, citing *United States v. Stone & Downer Co.*, 274 U.S. 225, 71 L. Ed. 1013, 47 S. Ct. 616, *Treas. Dec.* 42211 (1927), that “the doctrine of issue preclusion does not hold sway over classification disputes under U.S. Customs law.”

In the absence of a contrary legislative intent, tariff terms that are not defined in an HTSUSA section or chapter note, or clearly described in an EN, are construed in accordance with their common and commercial meanings, which are presumed to be the same. *Nippon Kogasku (USA) Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Dictionaries, scientific authorities and other reliable lexicographic sources are often consulted; and, where the term under consideration is technical in nature, appropriate technical sources of information should be consulted. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

The following electronic sources provide the following definitions of the term “preparations”:

Webster’s English Dictionary ([.math.chalmers.se](http://math.chalmers.se)) provides the following definition:

1: the action or process of making something ready for use or service or of getting ready for some occasion, test, or duty 2: a state of being prepared: READINESS 3: a preparatory act or measure 4: something that is prepared; specif : a medicinal substance fitted for use.

“Hyperdic.net” provides the following definition and examples:

Meaning: A substance prepared according to a formula.

Broader: compound

chemical compound

Synonyms: formulation

“Hyperdictionary.com” provides a similar definition, *i.e.*, a substance prepared according to a formula, as well as the following elaboration:

4. That which is prepared, made, or compounded by a certain process or for a particular purpose; a combination.

Specifically:

(a) Any medicinal substance fitted for use.

(b) Anything treated for preservation or examination as a specimen.

(c) Something prepared for use in cookery.

See similarly, “define.ansme.com”.

At Dorland’s Medical Dictionary online (see “mercksource.com”), the following definitions and examples are provided:

preparation 1. the act or process of making ready. 2. a medicine made ready for use. 3. an anatomic or pathologic specimen made ready and preserved for study.

At “thefreedictionary.com” the following definitions are provided:

preparation - a substance prepared according to a formula
formulation
cleaner, cleanser, cleansing agent - a preparation used in cleaning something

chemical compound, compound - (chemistry) a substance formed by chemical union of two or more elements or ingredients in definite proportion by weight

polish - a preparation used in polishing

See also HQ 965997, dated December 19, 2002.

We find from the rulings and lexicographic sources that a preparation in Chapter 33 of the tariff connotes a mixture of two or more substances com-

pounded together for a specific use. All of the exemplars provided by the ENs to heading 3304 comply with this basic definition, given that all of the substances are mixtures or compounds comprised of at least two distinct component or constituent materials. The articles at issue are akin to the calous remover classified in HQ 960964, set forth above, as they are implements that yield a cosmetic effect, rather than constituting a cosmetic preparation in and of themselves.

Stones comprised of *bona fide*, natural pumice are classified under heading 6804, specifically subheading 6804.30.0000, HTSUSA, which provides for millstones, grindstones, grinding wheels and the like . . . hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics with or without parts of other materials: hand sharpening or polishing stones. See NY B88174, dated August 18, 1997, NY H85283, dated September 6, 2001, NY A85730, dated July 24, 1996, NY G86299, dated February 6, 2001 and NY I88832, dated December 4, 2002. See also the ENs to heading 6804: certain stones (*e.g.*, pumice) are also used for toilet, manicure and pedicure purposes; the ENs provide further that *perfumed* pumice stone put up in blocks, tablets or similar prepared forms are classified in heading 3304, HTSUS. Both the requester and CBP acknowledged when the subject ruling was issued that the articles are not natural pumice but in fact are agglomerated plastic and calcium carbonate, a type of artificial stone. See our discussion of the term agglomerated stone vis-à-vis heading 6810, HTSUS, in HQ 956098, dated May 16, 1994:

Artificial stone is an imitation of natural stone obtained by agglomerating pieces of natural stone or crushed or powdered natural stone (limestone, marble, granite, porphyry, serpentine, etc.) with lime or cement or other binders (*e.g.*, plastics). Articles of artificial stone include those of "terrazzo", "granito", etc . . . (emphasis added). * * *

EN 68.10 specifically states that artificial stone consists of natural stone (*i.e.*, calcium carbonate) agglomerated with binders (*i.e.*, poly-resin). We are of the opinion that the crucial factor which makes a product an article of artificial stone is the uniform blending of the natural stone material with the binding material. Pursuant to EN 68.10, the figurines at issue are articles of artificial stone. They are made from poly-resin and calcium carbonate.

The articles in question, upon importation, are implements for removing, smoothing or abrading rough or dead skin from the hands or feet. The articles, by composition, are agglomerated stone classified under heading 6804, HTSUS.

HOLDING:

The agglomerated manicure/pedicure articles (a "pumice sponge" (Style # 93189 UPC# 0-41250-05813) and agglomerated "pumice stones" (style # 61-K-01; UPC # 41250-62844)) are classified under subheading 6804.30.0000, HTSUSA, which provides for millstones, grindstones, grinding wheels and the like . . . hand sharpening or polishing stones, and parts thereof, of natural stone, of agglomerated natural or artificial abrasives, or of ceramics with or without parts of other materials: hand sharpening or polishing stones. The general, column one duty rate is free.

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

EFFECT ON OTHER RULINGS:

NY A84500 is modified. In accordance with 19 U.S.C. §1625 (c)(2), this ruling will become effective sixty (60) days after its publication in the *Customs Bulletin*.

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

cc: National Commodity Specialist Division
NIS Bunin
NIS Joseph

**PROPOSED MODIFICATION AND REVOCATION OF
RULING LETTERS AND REVOCATION OF TREATMENT
RELATING TO TARIFF CLASSIFICATION OF POWER
STRIPS**

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

ACTION: Notice of proposed modification and revocation of ruling letters and revocation of treatment relating to tariff classification of power strips.

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 CBP intends to modify three rulings and revoke seven other rulings relating to the classification of power strips under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment CBP has previously accorded to substantially identical transactions. These articles are assemblies consisting of power strips on a board, panel or console with various combinations of extension cords, on/off switches, circuit breakers and surge protectors. They permit multiple electrical devices to be plugged in. CBP invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before November 4, 2005.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., dur-

ing regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Tariff Classification and Marking Branch (202) 572-8779.

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), 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 based on the premise 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 rights and responsibilities 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, 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 declare value on imported merchandise, and to provide other necessary information to enable CBP to properly assess duties, collect accurate statistics and determine whether any other 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 three rulings and revoke seven other rulings relating to the tariff classification of power strips. Although in this notice CBP is specifically referring to ten rulings, PD B89475, dated September 25, 1997, NY D87643, dated February 22, 1999, NY F82743, dated February 24, 2000, NY F87515, dated June 13, 2000, NY H89890, dated April 26, 2002, NY J81768, dated April 23, 2003, NY H89911, dated April 25, 2002, NY I86010, dated October 2, 2002, NY J83865, dated May 30, 2003, and NY J83866, dated May 29, 2003, 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 data bases for rulings in addition to the ones listed. No further rulings have been identified. Any party who has received an interpretative 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 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment it previously accorded 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 his agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In each of the listed rulings, assemblies consisting of power strips on a board, panel or console and combinations of extension cords, on/off switches, circuit breakers and surge protectors were held to be classifiable in provisions of heading 8536, HTSUS, as electrical apparatus for switching or protecting electrical circuits, for a voltage not exceeding 1,000 V. These rulings were based, in part at least, on the belief that the apparatus met the legal description in heading 8536. These rulings are set forth as Attachments A through J to this document, respectively.

It is now CBP's position that this apparatus is classifiable in provisions of heading 8537, HTSUS, as boards, panels or consoles equipped with two or more apparatus of heading 8535 or 8536 for electric control or the distribution of electricity. Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify and revoke, as appropriate, each of the ten rulings, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis in HQ 967525, HQ 967869, HQ 967870, HQ 967871, HQ 967872, HQ 967873, HQ 967874, and HQ 967875, which are set forth as Attachments K through R to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: September 19, 2005

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

PD B89475
September 25, 1997
CLA-2-85-P:OFO:B07 B89475
CATEGORY: Classification
TARIFF NO.: 8536.30.8000

MS. LORI ALDINGER
IMPORT COORDINATOR
RITE AID CORPORATION
*P.O. Box 3165
Harrisburg, PA 17105*

RE: The tariff classification of a surge protector from China

DEAR MS. ALDINGER:

In your letter dated August 25, 1997, which was received by U.S. Customs in New York on September 8, 1997, you requested a tariff classification ruling.

The subject article is a 6-outlet surge protector with a 33 inch heavy-duty line cord. It has all outlets grounded and polarized for safety, is surge protected, 1449 UL listed, has concealed 4-way mounting holes, a power light, and a safety overload circuit breaker which shuts off automatically. It is designated as your item number 972924.

The applicable subheading for the surge protector will be 8536.30.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for apparatus for protecting electrical circuits, other than motor overload protectors, for a voltage not exceeding 1000 V. The rate of duty will be 3.7 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

IAN C. SANG,
*Port Director,
Phoenix, Arizona.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY D87643

February 22, 1999

CLA-2-85:RR:NC:1:112 D87643

CATEGORY: Classification

TARIFF NO.: 8544.51.9000; 8536.69.8000;
8536.30.8000; 9405.40.8000

MS. BRENDA E. SMITH
FRITZ COMPANIES, INC.
7001 Chatham Center Drive
Savannah, GA 31405

RE: The tariff classification of a "Power Station" from China

DEAR MS. SMITH:

In your letter dated January 26, 1999, on behalf of Lowes Companies, Inc., you requested a tariff classification ruling.

As indicated by the submitted information, the "Power Station" consists of a blister package containing a five foot extension cord, a six outlet wall tap, a three outlet wall tap, a six outlet power strip with surge protection, and a night light with bulb. You have indicated that you believe this should be treated as a set for tariff classification purposes. We do not agree since, in our opinion, it does not meet the requirement that a set consist of products or articles put up together to meet a particular need or carry out a specific activity. Accordingly, each of the items are separately classifiable.

The applicable subheadings and rates of duty are as follows:

Five foot extension cord - 8544.51.9000, HTS, which provides for other electric conductors, for a voltage exceeding 80 V but not exceeding 1,000 V: Fitted with connectors: Other: Other - dutiable at 2.6 percent ad valorem

Six outlet and three outlet wall tap - 8536.69.8000, HTS, which provides for Lampholders, plugs and sockets: Other: Other - dutiable at 2.7 percent ad valorem.

Six outlet power strip with surge protection - 8536.30.8000, HTS, which provides for other apparatus for protecting electrical circuits: Other - dutiable at 2.7 percent ad valorem.

Night lite with bulb - 9405.40.8000, HTS, which provides for Other electric lamps and lighting fittings: Other - dutiable at 3.9 percent ad valorem.

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

A copy of the ruling 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 David Curran at 212-637-7049.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY F82743

February 24, 2000

CLA-2-85:RR:NC:1:112 F82743

CATEGORY: Classification

TARIFF NO.: 8544.51.9000; 8536.69.8000

MR. ORLANDO RODRIGUEZ
ALMACENES PITUSA, INC.
P.O. Box 839
Hato Rey Station
San Juan, PR 00919-0839

RE: The tariff classification of a power strip and outlet adapters from Taiwan

DEAR MR. RODRIGUEZ:

In your letter dated January 28, 2000 you requested a tariff classification ruling.

As indicated by the submitted descriptive literature, the power strip, identified as item W-14-G-4536, is a 125 volt six outlet strip containing a switch/circuit breaker combination, and a three foot electrical cord with a plug attached. The outlet adapters consist of item W-14-G-3321, which contains six electrical outlets, and item W-14-G-3322, which contains three electrical outlets. These adapters are plugged into an existing electrical outlet and provide for additional sockets.

The applicable subheading for the power strip, item W-14-G-4536, will be 8544.51.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for other electric conductors, for a voltage exceeding 80 V but not exceeding 1,000 V: Fitted with connectors: Other: Other. The rate of duty will be 2.6 percent ad valorem. The applicable subheading for the outlet adapters will be 8536.69.8000, HTS, which provides for lamp holders, plugs and sockets: Other. The rate of duty will be 2.7 percent ad valorem.

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

A copy of the ruling 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 David Curran at 212-637-7049.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY F87515
June 13, 2000
CLA-2-85:RR:NC:1:112 F87515
CATEGORY: Classification
TARIFF NO.: 8536.30.8000

MS. MARY MARTIN
LYNX INTERNATIONAL, INC.
24760 South Main Street
Carson, CA 90745

RE: The tariff classification of an electrical power strip from China

DEAR MS. MARTIN:

In your letter dated May 16, 2000, on behalf of S. Michael Nostrant & Associates, you requested a tariff classification ruling.

As indicated by the submitted samples, identified as PR-6 and ET2, these are electrical power strips with built-in surge protection. Each of the strips is affixed to an electrical cord with a plug.

The applicable subheading for the PR-6 and ET2 power strips will be 8536.30.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for other apparatus for protecting electrical circuits: Other. The rate of duty will be 2.7 percent ad valorem.

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

A copy of the ruling 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 David Curran at 212-637-7049.

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

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY H89890

April 26, 2002

CLA-2-85:RR:NC:1:112 H89890

CATEGORY: Classification

TARIFF NO.: 8536.30.8000

MS. KAREN A. SOUSA
APC CORPORATION
P.O. Box 278
132 Fairgrounds Road
West Kingston, RI 02892

RE: The tariff classification of a power distribution unit from Ireland

DEAR MS. SOUSA:

In your letter dated March 11, 2002 you requested a tariff classification ruling.

As indicated by the submitted sample and descriptive literature, the power distribution unit, identified as item # AP9553, is a 12 outlet power strip with a built-in circuit breaker. It is designed for rack mounting and is intended for use with various types of electronic equipment.

The applicable subheading for the power distribution unit, item # AP9553, will be 8536.30.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for other apparatus for protecting electrical circuits: Other. The rate of duty will be 2.7 percent ad valorem.

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

A copy of the ruling 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 David Curran at 646-733-3017.

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

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY J81768

April 23, 2003

CLA-2-85:RR:NC:1:112 J81768

CATEGORY: Classification

TARIFF NO.: 8536.30.8000

MS. KAREN A. SOUSA
AMERICAN POWER CONVERSION CORPORATION
P.O. Box 278
132 Fairgrounds Road
West Kingston, RI 02892

RE: The tariff classification of a power distribution unit from India

DEAR MS. SOUSA:

In your letter dated March 26, 2003 you requested a tariff classification ruling.

As indicated by the submitted sample and information, the power distribution unit, identified as item number AP7626, is an electrical multi-outlet power strip with built-in overload protection.

The applicable subheading for the power distribution unit, item number AP7626, will be 8536.30.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for other apparatus for protecting electrical circuits: Other. The duty rate will be 2.7 percent ad valorem.

Articles classifiable under subheading 8536.30.8000, HTS, which are products of India may be entitled to duty free treatment under the Generalized System of Preferences (GSP) upon compliance with all applicable regulations. The GSP is subject to modification and periodic suspension, which may affect the status of your transaction at the time of entry for consumption or withdrawal from warehouse. To obtain current information on GSP, check our Web site at www.cbp.gov and search for the term "GSP".

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 David Curran at 646-733-3017.

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

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY H89911

April 25, 2002

CLA-2-85:RR:NC:1:112 H89911

CATEGORY: Classification

TARIFF NO.: 8536.30.8000; 8536.69.8000

MS. ALICE LIU
ATICO INTERNATIONAL USA, INC.
501 South Andrews Avenue
Ft. Lauderdale, FL 33301

RE: The tariff classification of a power stake strip and an outlet adapter
from China

DEAR MS. LIU:

In your letter dated March 13, 2002 you requested a tariff classification
ruling.

As indicated by the submitted samples, the power stake strip, identified
as item W14G4743, is a three-outlet power strip containing a built-in circuit
breaker. It is designed for outdoor use. The outlet adapter, identified as item
W14G4765, is a three outlet grounded receptacle.

The applicable subheading for the power stake strip, item W14G4743, will
be 8536.30.8000, Harmonized Tariff Schedule of the United States (HTS),
which provides for other apparatus for protecting electrical circuits: Other.
The rate of duty will be 2.7 percent ad valorem. The applicable subheading
for the outlet adapter, item W14G4765, will be 8536.69.8000, HTS, which
provides for lamp holders, plugs and sockets: Other: Other. The rate of duty
will be 2.7 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be pro-
vided with the entry documents filed at the time this merchandise is im-
ported. If you have any questions regarding the ruling, contact National Im-
port Specialist David Curran at 646-733-3017.

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

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY I86010

October 2, 2002

CLA-2-85:RR:NC:1:112 I86010

CATEGORY: Classification

TARIFF NO.: 8536.30.8000

MS. GAIL MORIN
BLACK & DECKER
701 East Joppa Road
Towson, MD 21286

RE: The tariff classification of a "Powerbag with Electrical Strip Set". The country of origin is not stated.

DEAR MS. MORIN:

In your letter dated August 26, 2002 you requested a tariff classification ruling.

As indicated by the submitted information, the "Powerbag with Electrical Strip Set" consists of a polyester storage bag containing a power strip with built-in surge protection. The electrical sockets of the strip can be accessed through an opening in the bag that is designed for that purpose. There is also an opening in the bag to accommodate the electrical cord.

The applicable subheading for the "Powerbag with Electrical Strip Set" will be 8536.30.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for other apparatus for protecting electrical circuits: Other. The general rate of duty will be 2.7 percent ad valorem.

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

A copy of the ruling 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 David Curran at 646-733-3017.

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

[ATTACHMENT I]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY J83865

May 30, 2003

CLA-2-85:RR:NC:1:112 J83865

CATEGORY: Classification

TARIFF NO.: 8536.30.8000

MR. JOSEPH STINSON
LISS GLOBAL, INC.
7746 Dungan Road
Philadelphia, PA 19111

RE: The tariff classification of a power strip from China

DEAR MR. STINSON:

In your letter dated April 27, 2003 you requested a tariff classification ruling.

As indicated by the submitted sample, the power strip, identified as item # W14G5358, is a six outlet strip with a built in circuit breaker. It also contains an electrical cord that is 2 feet, 6 inches in length. The power strip itself is housed within a plaster representation of a village scene.

The applicable subheading for the power strip, item # W14G5358, will be 8536.30.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for other apparatus for the protection of electrical circuits: Other. The rate of duty will be 2.7 percent ad valorem.

You have proposed classification under subheading 9505.10.4020, HTS. The power strip is a totally functional item that merely incorporates a toy/festive motif. As such, it is not within the purview of subheading 9505.10.4020, 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 David Curran at 212-637-7049.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT J]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY J83866

May 29, 2003

CLA-2-85:RR:NC:1:112 J83866

CATEGORY: Classification

TARIFF NO.: 8536.30.8000

MR. JOSEPH STINSON
LISS GLOBAL, INC.
7746 Dungan Road
Philadelphia, PA 19111

RE: The tariff classification of a power stake from China

DEAR MR. STINSON:

In your letter dated April 27, 2003 you requested a tariff classification ruling.

As indicated by the submitted sample, the power stake, identified as item # W14G5431, is a three outlet power strip with a built in circuit breaker and a 12 foot extension cord. The power strip itself is housed within a plaster representation of a snowman.

The applicable subheading for the power stake, item # W14G5431, will be 8536.30.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for other apparatus for protecting electrical circuits. The rate of duty will be 2.7 percent ad valorem.

You have proposed classification under subheading 9505.10.4020, HTS. The power stake is a totally functional item that merely incorporates a toy/festive motif. As such, it is not within the purview of subheading 9505.10.4020, 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 David Curran at 646-733-3017.

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

[ATTACHMENT K]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967525
CLA-2 RR:CTF:TCM 967525 JAS
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MS. LORI ALDINGER
IMPORT COORDINATOR
RITE AID CORPORATION
P.O. Box 3165
Harrisburg, PA 17105

RE: Surge Protector; PD B89475 Revoked

DEAR MS. ALDINGER:

In PD B89475, which the Port Director, U.S. Customs and Border Protection (CBP), Phoenix, AZ, issued to you on September 25, 1997, a surge protector was found to be classifiable in subheading 8536.30.8000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as other apparatus for protecting electrical circuits, for a voltage not exceeding 1,000 V. We have reconsidered this classification and now believe that it is incorrect.

FACTS:

The article in question, designated item number 972924, is a six-outlet surge protector with a 33-inch heavy-duty line cord. All outlets are grounded and polarized for safety. The article has a safety overload circuit breaker which shuts off immediately.

The HTSUS provisions under consideration are as follows:

8536	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:
8536.20.00	Automatic circuit breakers
8536.30	Other apparatus for protecting electrical circuits:
8536.30.40	Motor overload protectors
8536.30.80	Other
*	* * * *
8537	Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . .:
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other

ISSUE:

Whether the surge protector, as described, is a good of heading 8536 or heading 8537.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The 85.36 ENs, under **(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS**, discusses **fuses** and indicates further that the heading includes other devices for preventing overload of circuits (e.g., electromagnetic devices which automatically break the circuit when the current exceeds a certain value). Both the six-outlet surge protector and the safety overload circuit breaker in the article under consideration are devices that prevent overload of circuits. They constitute apparatus for protecting electrical circuits of heading 8536.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. *See* also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the device at issue, which incorporates a surge protector and a circuit breaker (two kinds of apparatus of heading 8536) on a board panel, console or other base, principally used for electric control, is provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the surge protector designated item number 972924 is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS. PD B89475, dated September 25, 1997, is revoked.

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

[ATTACHMENT L]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967869
CLA-2 RR:CTF:TCM 967869 JAS
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MR. JOSEPH STINSON
LISS GLOBAL, INC.
7746 Dungan Road
Philadelphia, PA 19111

RE: Power Strip, Power Stake; NY FJ83865 and NY J83866 Revoked

DEAR MR. STINSON:

In NY J83865 and NY J83866, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on May 30 and 29, 2003, respectively, power strips and power stakes were held to be classifiable as other apparatus for protecting electrical circuits in subheading 8536.30.8000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reconsidered these classifications and determined that they are incorrect.

FACTS:

The merchandise in NY J83865, identified as item W14G5358, is a six-outlet power strip with built-in circuit breaker and two-foot six-inch electrical cord. The power strip is housed within a plaster representation of a village scene. The merchandise in NY J83866, identified as item W14G5431, is a three-outlet power strip with built-in circuit breaker and 12-foot extension cord. The power strip is housed within a plaster representation of a snowman.

The HTSUS provisions under consideration are as follows:

8536 Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:

8536.30 Other apparatus for protecting electrical circuits:

8536.30.80 Other

Lamp-holders, plugs and sockets:

8536.69 Other:

8536.69.80 Other

*

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8537 Boards, panels, consoles, desks, cabinets, and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . :

8537.10 For a voltage not exceeding 1,000 V:

8537.10.90 Other

ISSUE:

Whether merchandise represented by the power strip and power stake, items W14G5358 and W14G5431, are goods of heading 8536 or heading 8537.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The 85.36 ENs, under **(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS**, discusses **fuses** and indicates further that the heading includes other devices for preventing overload of circuits (e.g., electromagnetic devices which automatically break the circuit when the current exceeds a certain value). The built-in circuit breaker in NY J83865 and NY J83866 are apparatus that prevents overload of circuits. They meet the cited EN description and constitute apparatus for protecting electrical circuits of heading 8536.

The 85.36 ENs, under **(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS**, includes apparatus for connecting together the various parts of an electrical circuit. Included in this group are plugs and sockets. A plug may have one or more pins or side contacts which match corresponding holes or contacts in the socket. The six-outlet power strip in NY J83865 and the three-outlet power strip in NY J83866 function as sockets within the cited EN description. They are described in heading 8536 as apparatus for making connections to or in electrical circuits.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. See also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the merchandise in NY J83865, a six-outlet power strip with built-in circuit breaker (two or more different kinds of apparatus of heading 8536) housed in a plaster representation of a village scene on a board, panel, console or other base, principally used for electric control or the distribution of electricity, is provided for in heading 8537. The merchandise in NY J83866, a three-outlet power strip with built-in circuit breaker (two or more different kinds of apparatus of heading 8536) housed in a plaster representation of a snowman on a board, panel, console or other

base, principally used for electric control or the distribution of electricity, is likewise provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the six-outlet power strip with built-in circuit breaker, identified as item W14G5358, is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS. Under the authority of GRI 1, the three-outlet power strip with built-in circuit breaker, identified as item W14G5431, is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS. NY J83865 and NY J83866, dated May 30 and May 29, 2003, respectively, are revoked.

MYLES B. HARMON,
Director,

Commercial and Trade Facilitation Division.



[ATTACHMENT M]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967870
CLA-2 RR:CTF:TCM 967870 JAS
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MS. GAIL MORIN
BLACK & DECKER
701 East Joppa Road
Towson, MD 21286

RE: Powerbag with Electrical Strip Set; NY I86010 Revoked

DEAR MS. MORIN:

In NY I86010, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on October 2, 2002, a Powerbag with Electrical Strip Set was held to be classifiable as other apparatus for protecting electrical circuits in subheading 8536.30.8000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reconsidered this classification and determined that it is incorrect.

FACTS:

The merchandise in NY I86010, the Powerbag with Electrical Strip Set, consists of a polyester storage bag containing a power strip with built-in surge protection. The electrical sockets of the strip can be accessed through an opening in the bag that is designed for that purpose. The bag also has an opening to accommodate an electric power cord.

strip in the device under consideration functions as a socket within the cited EN description. It is described in heading 8536 as apparatus for making connections to or in electrical circuits.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. See also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the merchandise at issue, the Powerbag with Electrical Strip Set, containing a power strip with built-in surge protection (two or more different kinds of apparatus of heading 8536) on a board, panel, console or other base, principally used for electric control or the distribution of electricity, is provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the Powerbag with Electrical Strip Set is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS.

The polyester storage bag, as described, is a container specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, within GRI 5(a), HTSUS. It is classifiable with the Powerbag with Electrical Strip Set when of a kind normally sold therewith.

NY I86010, dated October 2, 2002, is revoked.

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

[ATTACHMENT N]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967871
CLA-2 RR:CTF:TCM 967871 JAS
CATEGORY: Classification
TARIFF NO.: 8537.10.90

Ms. ALICE LIU
ATICO INTERNATIONAL USA, INC.
501 South Andrews Avenue
Ft. Lauderdale, FL 33301

RE: Power Stake Strip; NY H89911 Modified

DEAR MS. LIU:

In NY H89911, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on April 25, 2002, a power stake strip was held to be classifiable as other apparatus for protecting electrical circuits in subheading 8536.30.8000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have

reconsidered this classification and determined that it is incorrect. The classification expressed for the outlet adapter, item W14G4765, is unaffected by this decision.

FACTS:

The merchandise in NY H89911, a power stake strip identified as item W14G4743, is a three-outlet power strip with built-in circuit breaker. It is designed for outdoor use. The article is not further described.

The HTSUS provisions under consideration are as follows:

8536 Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:

8536.30 Other apparatus for protecting electrical circuits:

8536.30.80 Other

Lamp-holders, plugs and sockets:

8536.69 Other:

8536.69.80 Other

* * * *

8537 Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . :

8537.10 For a voltage not exceeding 1,000 V:

8537.10.90 Other

ISSUE:

Whether the power stake strip with built-in circuit breaker is a good of heading 8536 or heading 8537.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The 85.36 ENs, under **(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS**, discusses **fuses** and indicates further that the heading includes other devices for preventing overload of circuits (e.g., electromagnetic devices which automatically break the circuit when the current exceeds a certain value). The built-in circuit breaker in the power stake strip

is apparatus that prevents overload of circuits. It meets the cited EN description and constitutes apparatus for protecting electrical circuits of heading 8536.

The 85.36 ENs, under **(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS**, includes apparatus for connecting together the various parts of an electrical circuit. Included in this group are plugs and sockets. A plug may have one or more pins or side contacts which match corresponding holes or contacts in the socket. The power stake strip functions as a socket within the cited EN description. It is described in heading 8536 as apparatus for making connections to or in electrical circuits.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. See also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the merchandise at issue, a three-outlet power strip with built-in circuit breaker (two or more different kinds of apparatus of heading 8536) on a board, panel, console or other base, principally used for electric control or the distribution of electricity, is provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the power stake strip, a 3-outlet power strip with built-in circuit breaker, item W14G4743, is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS. NY H89911, dated April 25, 2002, is modified accordingly.

MYLES B. HARMON,

Director;

Commercial and Trade Facilitation Division.



[ATTACHMENT O]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967872

CLA-2 RR:CTF:TCM 967872 JAS

CATEGORY: Classification

TARIFF NO.: 8537.10.90

MS. KAREN A. SOUSA
APC CORPORATION
P.O. Box 278
132 Fairgrounds Road
West Kingston, RI 02892

RE: Power Distribution Unit; NY H89890 and NY J81768 Revoked

DEAR MS. SOUSA:

In NY H89890 and NY J81768, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York,

issued to you on April 26, 2002, and April 23, 2003, respectively, power distribution units were held to be classifiable as other apparatus for protecting electrical circuits in subheading 8536.30.8000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reconsidered these classifications and determined that they are incorrect.

FACTS:

The merchandise in NY H89890, identified as item AP9553, is a 12-outlet power strip with built-in circuit breaker. It is designed for rack mounting and is intended for use with various types of electronic equipment. The merchandise in NY J81768, item number AP7626, is an electrical multi-outlet power strip with built-in overload protection.

The HTSUS provisions under consideration are as follows:

- | | |
|-------------------|--|
| 8536 | Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V: |
| 8536.30 | Other apparatus for protecting electrical circuits: |
| 8536.30.80 | Other
Lamp-holders, plugs and sockets: |
| 8536.72 | Other: |
| 8536.69.80 | Other |
| * | * * * * |
| 8537 | Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . : |
| 8537.10 | For a voltage not exceeding 1,000 V: |
| 8537.10.90 | Other |

ISSUE:

Whether power distribution units represented by items AP9553 and AP7626, are goods of heading 8536 or heading 8537.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The 85.36 ENs, under **(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS**, discusses **fuses** and indicates further that the heading includes other devices for preventing overload of circuits (e.g., electromagnetic devices which automatically break the circuit when the current exceeds a certain value). The built-in circuit breaker in NY H89890 and the built-in overload protection in NY J81768 are apparatus that prevents overload of circuits. They meet the cited EN description and constitute apparatus for protecting electrical circuits of heading 8536.

The 85.36 ENs, under **(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS**, includes apparatus for connecting together the various parts of an electrical circuit. Included in this group are plugs and sockets. A plug may have one or more pins or side contacts which match corresponding holes or contacts in the socket. The 12-outlet power strip in NY H89890 and the electrical multi-outlet power strip in NY J81768 function as sockets within the cited EN description. They are described in heading 8536 as apparatus for making connections to or in electrical circuits.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. See also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the merchandise in NY H89890, a twelve-outlet power strip with built-in circuit breaker (two or more different kinds of apparatus of heading 8536) on a board, panel, console or other base, principally used for electric control or the distribution of electricity, is provided for in heading 8537. The merchandise in NY J81768, an electrical multi-outlet power strip with built-in overload protection on a board, panel, console or other base, principally used for electric control or the distribution of electricity, is likewise provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the twelve-outlet power strip with built-in circuit breaker, identified as item AP9553, is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS. Under the authority of GRI 1, the electrical multi-outlet power strip with built-in overload protection, identified as item AP7626, is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS. NY H89890, dated April 26, 2002, and NY J81768, dated April 23, 2003, are revoked.

MYLES B. HARMON,

Director;

Commercial and Trade Facilitation Division.

[ATTACHMENT P]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967873
CLA-2 RR:CTF:TCM 967873 JAS
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MS. MARY MARTIN
LYNX INTERNATIONAL, INC.
24760 South Main Street
Carson, CA 90745

RE: Electrical Power Strip; NY F87515 Revoked

DEAR MS. MARTIN:

In NY F87515, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on June 13, 2000, on behalf of S. Michael Nostrant & Associates, electrical power strips were held to be classifiable as other apparatus for protecting electrical circuits in subheading 8536.30.8000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reconsidered this classification and determined that it is incorrect.

FACTS:

The merchandise in NY F87515, identified as samples PR-6 and ET2, consists of electrical power strips with built-in surge protection. Each device is affixed to an electrical cord with a plug. The articles are not further described.

The HTSUS provisions under consideration are as follows:

- | | |
|-------------------|--|
| 8536 | Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V: |
| 8536.30 | Other apparatus for protecting electrical circuits: |
| 8536.30.80 | Other
Lamp-holders, plugs and sockets: |
| 8536.69 | Other: |
| 8536.69.80 | Other |
| * | * |
| 8537 | Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . : |
| 8537.10 | For a voltage not exceeding 1,000 V: |
| 8537.10.90 | Other |

ISSUE:

Whether the electrical power strips with built-in surge protection are goods of heading 8536 or heading 8537.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The 85.36 ENs, under **(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS**, discusses **fuses** and indicates further that the heading includes other devices for preventing overload of circuits (e.g., electromagnetic devices which automatically break the circuit when the current exceeds a certain value). The built-in surge protection in the device under consideration is apparatus that prevents overload of circuits. It meets the cited EN description and constitutes apparatus for protecting electrical circuits of heading 8536.

The 85.36 ENs, under **(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS**, includes apparatus for connecting together the various parts of an electrical circuit. Included in this group are plugs and sockets. A plug may have one or more pins or side contacts which match corresponding holes or contacts in the socket. The electrical power strips function as sockets within the cited EN description. They are described in heading 8536 as apparatus for making connections to or in electrical circuits.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. See also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the merchandise at issue, electrical power strips with built-in surge protection and electrical cord (two or more kinds of apparatus of heading 8536) on a board, panel, console or other base, principally used for electric control or the distribution of electricity, is provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the electrical power strips with built-in surge protection and electrical power cord with plug, samples PR-6 and

ET2, are provided for in heading 8537. They are classifiable in subheading 8537.10.90, HTSUS. NY F87515, dated June 13, 2000, is revoked.

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



[ATTACHMENT Q]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967874
CLA-2 RR:CTF:TCM 967874 JAS
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MR. ORLANDO RODRIGUEZ
ALMANCENES PITUSA, INC.
P.O. Box 839
Hato Rey Station
San Juan, PR 00919-0839

RE: Power Strip; NY F82743 Modified

DEAR MR. RODRIGUEZ:

In NY F82743, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on February 24, 2000, a power strip and two models of outlet adapters held to be classifiable as insulated electrical conductors in a provision of heading 8544, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), and as other lamp holders, plugs and sockets in a provision of heading 8536, HTSUSA, respectively. We have reconsidered the classification of the power strip and determined that it is incorrect. The classification of the outlet adapters is not affected by this decision.

FACTS:

Item W-14-G-4536, is described as a 125 volt, six-outlet power strip containing a switch/circuit breaker combination, and a three-foot electrical cord with plug attached. This article is not further described.

The HTSUS provisions under consideration are as follows:

- 8536** Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:
- 8536.30** Other apparatus for protecting electrical circuits:
- 8536.30.80** Other
- 8536.50** Other switches:
 - Other:

8536.50.90	Other
	Lamp-holders, plugs and sockets:
8536.69	Other:
8536.69.80	Other
*	* * * *
8537	Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . :
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other

ISSUE:

Whether the six-outlet power strip containing a switch/circuit breaker combination is a good of heading 8536 or heading 8537.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The 85.36 ENs, under **(I) APPARATUS FOR SWITCHING ELECTRICAL CIRCUITS**, includes apparatus consisting essentially of devices for making or breaking one or more circuits in which they are connected, or for switching from one circuit to another. The switch in the switch/circuit breaker combination meets this description and is apparatus for switching electrical circuits of heading 8536.

The 85.36 ENs, under **(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS**, discusses **fuses** and indicates further that the heading includes other devices for preventing overload of circuits (e.g., electromagnetic devices which automatically break the circuit when the current exceeds a certain value). The circuit breaker in the switch/circuit breaker combination meets this description as apparatus that prevents overload of circuits. It constitutes apparatus for protecting electrical circuits of heading 8536.

The 85.36 ENs, under **(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS**, includes apparatus for connecting together the various parts of an electrical circuit. Included in this group are plugs and sockets. A plug may have one or more pins or side contacts which match corresponding holes or contacts in the socket. The 125 volt six-outlet power strip functions as a socket and is described in heading 8536 as apparatus for making connections to or in electrical circuits.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. See also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the device at issue, a 125 volt six-outlet power strip with switch/circuit breaker combination (two or more kinds of apparatus of heading 8536) on a board, panel, console or other base, principally used for electric control or the distribution of electricity, is provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the 125 volt six-outlet strip with switch/circuit breaker combination is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS. NY F82743, dated February 24, 2000, is modified accordingly.

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

[ATTACHMENT R]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967875
CLA-2 RR:CTF:TCM 967875 JAS
CATEGORY: Classification
TARIFF NO.: 8537.10.90

MS. BRENDA E. SMITH
FRITZ COMPANIES, INC.
7001 Chatham Center Drive
Savannah, GA 31405

RE: Power Station; NY D87643 Modified

DEAR MS. SMITH:

In NY D87643, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on February 22, 1999, on behalf of Lowes Companies, Inc., components of a device called the Power Station were found to be separately classifiable. We have reconsidered these classifications and now believe that one of them, the six-outlet power strip with surge protection, is incorrect. The classification of the remaining components is unaffected by this decision.

FACTS:

The Power Station consists of a five-foot extension cord, a six-outlet wall tap, a three-outlet wall tap, a six-outlet power strip with surge protection, and a night light with bulb. NY D87643 classified the six-outlet power strip with surge protection in subheading 8536.30.8000, Harmonized Tariff

Schedule of the United States Annotated (HTSUSA), as other apparatus for protecting electrical circuits.

The HTSUS provisions under consideration are as follows:

8536 Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:

8536.30 Other apparatus for protecting electrical circuits:

8536.30.80 Other

Lamp-holders, plugs and sockets:

8536.69 Other:

8536.69.80 Other

* * * *

8537 Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity . . . :

8537.10 For a voltage not exceeding 1,000 V:

8537.10.90 Other

ISSUE:

Whether the six-outlet power strip with surge protection is a good of heading 8536 or heading 8537.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The 85.36 ENs, under **(II) APPARATUS FOR PROTECTING ELECTRICAL CIRCUITS**, discusses **fuses** and indicates further that the heading includes other devices for preventing overload of circuits (e.g., electromagnetic devices which automatically break the circuit when the current exceeds a certain value). The surge protector is apparatus that prevents overload of circuits. It constitutes apparatus for protecting electrical circuits of heading 8536.

The 85.36 ENs, under **(III) APPARATUS FOR MAKING CONNECTIONS TO OR IN ELECTRICAL CIRCUITS**, includes apparatus for connecting together the various parts of an electrical circuit. Included in this group are plugs and sockets. A plug may have one or more pins or side con-

tacts which match corresponding holes or contacts in the socket. The power strip functions as a socket and is described in heading 8536 as apparatus for making connections to or in electrical circuits.

In *Universal Electronics, Inc. v. United States*, 112 F.3d 488 (Fed. Cir., 1997), articles incorporating two kinds of devices of heading 8536, i.e., switches and terminals, were found to be classifiable in heading 8537. See also HQ 964608, dated April 18, 2001, which noted that boards and panels were provided within the 8537 heading text, and classified video jacks having two or more apparatus of heading 8535 or 8536, i.e., connectors and switches, in heading 8537. Therefore, the device at issue, a six-outlet power strip with surge protection (two kinds of apparatus of heading 8536) on a board panel, console or other base, principally used for electric control or the distribution of electricity, is provided for in heading 8537.

HOLDING:

Under the authority of GRI 1, the six-outlet power strip with surge protection is provided for in heading 8537. It is classifiable in subheading 8537.10.90, HTSUS. NY D87643, dated February 22, 1999, is modified accordingly.

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division.

19 CFR PART 177

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO THE TARIFF CLASSIFICATION OF A
WRESTLING CHAMPIONSHIP BELT

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

ACTION: Notice of revocation of tariff classification ruling letter and revocation of treatment relating to the classification of a wrestling championship belt.

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 the Bureau of Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a wrestling championship belt. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on August 10, 2005, in the *Customs Bulletin*, Volume 39, Number 33. No comments were submitted.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 4, 2005.

FOR FURTHER INFORMATION CONTACT: David Salkeld, Tariff Classification and Marking Branch, at (202) 572-8781.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to revoke New York Ruling Letter (NY) K86424, dated June 25, 2004, was published on August 10, 2005, in the *Customs Bulletin*, Volume 39, Number 33. No comments were received in response to the notice. As stated in the notice of proposed revocation, the notice covered any rulings on the merchandise, which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to the 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 with substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical trans-

actions 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 K86424, CBP classified a wrestling championship belt under subheading 3926.20.9050, HTSUSA, which provides for: "Other articles of plastics and articles of other materials of headings 3901 to 3914: Articles of apparel and clothing accessories (including gloves, mittens and mitts): Other: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY K86424, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ 967749) (Attachment). 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: September 19, 2005

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967749
September 19, 2005
CLA-2 RR:CTF:TCM 967749 DSS
CATEGORY: Classification
TARIFF NO.: 8306.29.0000

MR. ROBERT P. KENNEALLY
FEDEX TRADE NETWORKS
150 Eastern Avenue
Chelsea, MA 02150

RE: Wrestling championship belt from China; NY K86424 Revoked

DEAR MR. KENNEALLY:

This letter is in reference to New York Ruling Letter (NY) K86424, dated June 25, 2004, which was issued to you on behalf of Figures, Inc. (importer) by the Director, National Commodity Specialist Division, Bureau of Customs and Border Protection (CBP), with respect to the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a World Wrestling Entertainment(tm) replica championship belt. After re-

viewing NY K86424, CBP has determined that the classification of the championship belt under subheading 3926.20.9050, HTSUSA, is incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 USC 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY K86424 was published in the August 10, 2005, CUSTOMS BULLETIN, Volume 39, Number 33. No comments were received in response to this notice.

FACTS:

In NY K86424, we classified a World Wrestling Entertainment™ (WWE) article advertised as a “Tag Team Championship Replica Belt” (belt) under subheading 3926.20.9050, HTSUSA, which provides for other articles of apparel and clothing accessories made of plastic. We described the belt as follows:

The submitted sample is Item # 53734 Tag Team Championship Replica Belt. You state that the belt is constructed of PVC simulated leather with affixed metal medallions. The belt comes in a fitted fabric case with a zipper.

You propose classification under subheading 8306.29.0000 as other ornaments of base metal. However, the metal is mere decoration on the belt, the PVC simulated leather gives the belt its form and structure. In addition, descriptive literature states that the replica is “Molded directly from the original belt. It is the same thickness and length as the original belt and measures 4 feet 4 inches in length . . . It is fastened by 8 snaps on each side. Fits up to 44 inch waist. . . .”

A sample has been submitted to CBP. The sample is similar to the description given in NY K86424. The sample weighs five pounds. The World Wrestling Entertainment™ logo adorns the plastic belt portion and base metal medallions. The base metal medallions appear plated in a shiny metal similar in appearance to gold, however, its exact composition is unknown. The metal medallions exhibit various other scenes depicting wrestlers in various poses, as well as crowns and other symbols. The center plate is approximately 10 inches high by 12 inches long and states: “World Wrestling Entertainment™ Tag team Champions.”

The importer of this merchandise has submitted new information indicating that both the metal components and the PVC belt portion contribute relatively equally to the bulk or weight of the article. However, substantially more of the value of the article is provided by the metal medallions.

ISSUE:

Whether the instant championship belt is classified under heading 3926, HTSUS, as an other article of plastic, or under heading 8306, HTSUS, as other ornaments of base metal.

LAW AND ANALYSIS:

Classification under the HTSUSA 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 may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are thus useful in ascertaining the classification of merchandise under the Harmonized System. CBP believes the ENs should always be consulted. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration (2004) are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.20	Articles of apparel and clothing accessories (including gloves, mittens and mitts):
	Other:
3926.20.90	Other.
	* *
3926.40.00	Statuettes and other ornamental articles.
	* * * *
8306	Belts, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof: Statuettes and other ornaments, and parts thereof:
8306.29.00	Other.

Based upon new information on this article and similar articles, and our own research it has become apparent that the belt is not apparel or a clothing accessory of plastic.

Heading 3926, HTSUS, is a "basket" provision for articles of plastics. EN 39.26 provides the following guidance in regard to heading 3926, HTSUS:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14.

They include:

- (1) Articles of apparel and clothing accessories (**other than** toys) made by sewing or sealing sheets of plastics, e.g., aprons, belts, babies' bibs, raincoats, dress-shields, etc. Detachable plastic hoods remain classified in this heading if presented with the plastic raincoats to which they belong . . .
- (3) Statuettes and other ornamental articles [emphasis in original]. . .

The importer argues that the championship belt is correctly classified under heading 8306, HTSUS. EN 83.06, states, in pertinent part, that:

(B) STATUETTES AND OTHER ORNAMENTS

This group comprises a wide range of ornaments of base metal (whether or not incorporating subsidiary non-metallic parts) of a kind

designed essentially for decoration, e.g., in homes, offices, assembly rooms, places of religious worship, gardens.

It should be noted that the group **does not include** articles of more specific headings of the Nomenclature, even if those articles are suited by their nature or finish as ornaments.

The group covers articles which have no utility value but are wholly ornamental, and articles whose only usefulness is to contain or support other decorative articles or to add to their decorative effect, for example:

- (1) Busts, statuettes and other decorative figures; ornaments (including those forming parts of clock sets) for mantelpieces, shelves, etc. (animals, symbolic or allegorical figures, etc.); sporting or art trophies (cups, etc.); wall ornaments incorporating fittings for hanging (plaques, trays, plates, medallions **other than** those for personal adornment); artificial flowers, rosettes and similar ornamental goods of cast or forged metal (usually of wrought iron); knick-knacks for shelves or domestic display cabinets [emphasis in original]. . . .

The instant championship belt is an article of plastic in part only. It also contains medallions of base metal. There is no specific heading for a good consisting of these items attached together. Thus, for tariff purposes, the product constitutes a good consisting of two or more substances or materials. Accordingly, it may not be classified solely on the basis of GRI 1. Further, GRI 2(a) is inapplicable because it applies to incomplete or unfinished articles, and the product is imported in a finished condition. According to GRI 2(b), the classification of goods consisting of more than one material or substance shall be according to the principles of GRI 3.

GRI 3(a) states that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods. As the subject product is a composite good, we must apply GRI 3(b), which provides that composite goods are to be classified according to the component that gives the good its essential character.

EN VIII to GRI 3(b) explains that “[t]he factor which determines the essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.”

New information presented to CBP, and our own research has caused us to reconsider the classification in NY K86424. In NY K86424 CBP classified this article as apparel or a clothing accessory of plastic. In NY K86424, CBP stated, in relevant part, “However, the metal is mere decoration on the belt, the PVC simulated leather gives the belt its form and structure.” Implicit in this analysis, is that the PVC belt component provided the essential character of the article. However, we now believe that the PVC belt portion of the article does not impart its essential characteristic.

The championship belt in question is not a clothing accessory. It does not exhibit the relationship with clothing necessary to be considered an accessory to clothing nor does it adorn or accent clothing. Furthermore, the belt does not serve a utilitarian purpose, such as securing pants. In fact, because of its weight (five pounds) any wearing of the belt for an extended period of time would likely be a fugitive use. It is primarily meant for display or decoration.

Therefore, we must consider other criteria in determining essential character, as outlined above. Both the metal components and the PVC belt portion contribute relatively equally to the bulk or weight of the article. However, substantially more of the value of the article is provided by the metal medallions. Moreover, it is the metal medallions that provide the majority of the decorative aspects of the belt. We conclude that the essential character of the replica championship belt is provided by the medallions of base metal, which provide the indispensable aspect to the belt — its decorative appeal.

Other CBP rulings have classified similar type of articles as decorative articles. In NY 806371, dated February 10, 1995, CBP found that lapel pins mounted in a frame for display were not meant to be worn but were meant to be hung as a decoration. Therefore, those lapel pins were classified under heading 8306, HTSUS. In NY H81608, dated May 16, 2001, lapel pins were either mounted in a frame or presentation box upon importation, or the pins were imported as a set and mounted into frames in the United States. In these rulings, CBP stated that the pins were not meant to be worn, and were, in fact too large to be worn on the person, but instead were to be displayed as a decoration. Research of Internet sites advertising championship belts of this type indicate they are not worn as apparel or clothing accessories, because of their size, weight and overall cost. See, e.g., www.midwestwrestling.com, www.wrestlingsuperstore.com, and www.championshipbelts.com. Instead, they are used for display in the home.

Therefore, we find that the instant articles are within the scope of the description provided in the heading text of 8306, HTSUS. This conclusion is supported by EN 83.06, cited above. Based on the foregoing analysis, the instant replica championship belts are classified under subheading 8306.29.0000, HTSUSA.

With regard to the fitted fabric case with a zipper in which the belt is imported, we believe that GRI 5(a) is applicable. GRI 5(a) provides, in relevant part:

Camera cases, musical instrument cases, . . . and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

Based on the available information, the fitted fabric case meets the terms of GRI 5(a) and is classified with the championship belt.

HOLDING:

At GRI 3(b), the instant merchandise is provided for in heading 8306, HTSUSA. It is classified under subheading 8306.29.0000, HTSUSA, as “Belts, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base

metal; mirrors of base metal; and base metal parts thereof: Statuettes and other ornaments, and parts thereof: Other.” The 2005 column one, general 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 World Wide Web at www.usitc.gov/tata/hts.

EFFECT ON OTHER RULINGS:

NY K86424 is REVOKED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

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

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND
TREATMENT RELATING TO THE TARIFF CLASSIFICATION
OF A NETWORK INTERFACE UNIT

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of a network interface unit under the Harmonized Tariff Schedule of the United States (“HTSUS”).

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (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 CBP is revoking one ruling pertaining to the tariff classification of a network interface unit under the HTSUS and any treatment previously accorded by CBP to substantially identical transactions. CBP invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before November 4, 2005.

ADDRESS: Written comments are to be addressed to the U.S. Bureau of Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at the offices of U.S. Customs and Border Protection, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, Tariff Classification and Marking Branch (202) 572-8785.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to revoke one ruling letter pertaining to the tariff classification of a network interface unit. Although in this notice CBP is specifically referring to one ruling (NY C88716) 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 additional 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 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 the proposed action.

In NY C88716 (Attachment A), CBP classified a network interface unit that CBP was led to believe was for the transmission of telephonic voice signals and cable television signals. It was classified in subheading 8525.10.3035, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), which provides for, among other apparatus, transmission apparatus for cable television. However, the importer has now informed CBP that the unit transmits, modulates and demodulates only voice and voiceband data signals, and not cable television signals, as was originally believed. Product literature supports the importer's assertion. Therefore, it is now CBP's position that the network interface unit should be classified in heading 8517, specifically subheading 8517.50.5000, HTSUSA, which provides for "Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones; parts thereof: Other apparatus for carrier-current line systems or for digital line systems: Other: Telephonic."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY C88716 and any other ruling not specifically identified to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analyses set forth in HQ 967795 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Dated: September 19, 2005

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY C88716
June 26, 1998
CLA-2-87:RR:NC:MM:101 C88716
CATEGORY: Classification
TARIFF NO.: 8409.91.5080, 8708.99.7360

MR. BOB MATSKO
ASST. MFR. CUSTOMS ADMINISTRATION
TOYOTA MOTOR MANUFACTURING NORTH AMERICA, INC.
25 Atlantic Avenue
Erlanger, Ky 41018

RE: The tariff classification of a valve spring lock and a steering rack bushing.

DEAR MR. MATSKO:

In your letter dated June 12, 1998, you requested a tariff classification ruling.

The first item is a Valve Spring Lock (Part Number 90913-03028-00). You describe the item as used in the assembly of automotive internal combustion engines. The valve spring lock holds the valve spring in place.

The applicable subheading for the valve spring lock if it used in spark ignition internal combustion engines will be 8409.91.5080, Harmonized Tariff Schedule of the United States (HTS), which provides for parts suitable for use solely or principally with the engines of heading 8407 or 8408: suitable for use solely or principally with spark ignition internal combustion piston engines other, for vehicles of subheading 8701.20, or heading 8702, 8703, or 8704..

other . . The rate of duty will be 2.6 percent ad valorem.

The applicable subheading for the valve spring lock if it is used in non spark ignition internal combustion engines will be 8409.99.9190 Harmonized Tariff Schedule of the United States (HTS), which provides for parts suitable for use solely or principally with the engines of heading 8407 or 8408 . . . other . . . other: for vehicles of subheading 8701.20, or heading 8702, 8703, or 8704 . . . other. The rate of duty will be 2.7 percent ad valorem.

The second item is a steering rack bushing (Part Number 45522-34020-00) This component is used in the steering system of a pick-up truck.

The applicable subheading for the steering rack bushing will be 8708.99.7360, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705 . . . other . . . parts for steering systems . . . other.. The rate of duty will be 2.6 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is im-

ported. If you have any questions regarding the ruling, contact National Import Specialist Robert DeSoucey at 212-466-5667.

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



[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967795
CLA-2 RR: CTF: TCM 967795 DBS
CATEGORY: Classification
TARIFF NO.: 8517.50.9000

ARRIS INTERNATIONAL, INC.
(FORMERLY ARRIS INTERACTIVE)
3871 Lakefield Drive
Suwanee, GA 30024

RE: Revocation of C87716; Network Interface Unit

DEAR SIR OR MADAM:

On May 18, 1998, the Director, National Commodity Specialist Division (NCSA), issued to your then-agent, C.H. Powell Company, New York Ruling Letter (NY) C87716, classifying a Network Interface Unit (NIU) in subheading 8525.10.3035, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as transmission apparatus for television because both cable video and telephone signals were routed through the unit. In light of new information submitted to this office by an agent of ARRIS International, Inc., about the function of the NIU, we have found the classification to now be incorrect. This ruling sets forth the correct classification.

FACTS:

Based on the information submitted in the ruling request, NY C87716 described the NIU's functions as splitting off an RF (radio frequency) video signal and transmitted it to a customer's television unit, and converted the RF signal back to a telephony signal and transmitted it to the customer's telephone unit. As it transmitted both cable and telephone signals, CBP classified the good according to these multiple functions.

CBP has now been informed that at the time of the ruling request, the product was still under development and had not yet been distributed or sold. After the product was released for general sale and distribution, the NIU became the Voice Port. The Voice Port enables digital telephonic communication over a standard Hybrid-Fiber-Coax network. The NIU is situated on a cable television line where it receives and demodulates incoming digital RF carrier telephony signals delivered by the cable provider, and it converts the signal to voice or voiceband data (fax). It does not transmit or receive cable television signals. Descriptive product literature indicates that the system in which this good operates is for line telephony. The unit has not been physically modified in any material aspect between the issuance of NY C88716 and now.

ISSUE:

Whether the new information about the function of the NIU warrants a change in the classification as “telecommunication apparatus for digital line systems” under heading 8517, Harmonized Tariff Schedule of the United States (HTSUS).

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation. 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 may then be applied.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. The ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings at issue are as follows:

8517 Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones; parts thereof:

* * *

8525 Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras and other video camera recorders; digital cameras.

EN 85.17 (IV) describes apparatus for carrier current line systems or for digital line systems in relevant part as follows:

These systems are based on the modulation of an electrical carrier-current or of a light beam by analogue or digital signals. Use is made of the carrier-current modulation technique and pulse code modulation (PCM) or some other digital system. These systems are used for the transmission of all kinds of information (characters, graphics, images, or other data, etc.).

The NIU falls squarely within heading 8517, HTSUS, because it is apparatus for line telephony, receiving and demodulating incoming digital RF carrier telephony signals.

EN 85.25 (B) describes transmission apparatus for radio-broadcasting or television as having to be for the transmission of signals by means of electromagnetic waves transmitted through the ether without any line connection, but that television apparatus falls here whether the transmission is by electro-magnetic waves or by line.

Contrary to the suggestion by ARRIS International, Inc., apparatus of heading 8525, HTSUS, may use a line connection if it is for television. As we believed the NIU to transmit cable television signals, it was also covered by

the terms of heading 8525, HTSUS. Section XVI, Note 3 provides that apparatus designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that which performs the principal function. At the time NY C87716 was issued, no information was available to determine the principal function of the NIU. Section XVI, General EN (VI) directs that “where it is not possible to determine the principal function . . . it is necessary to apply General Interpretative Rule 3(c).” Therefore, GRI 3(c), which states that a good was to be classified under the heading which occurs last in numerical order among those which equally merit consideration, was applied to classify the apparatus in heading 8525, HTSUS.

CBP has now learned from ARRIS that the NIU does not, in fact, transmit or receive cable television signals. A review of the product literature establishes that the apparatus is only a telecommunication device though it uses coaxial cable lines. It is apparent now that the initial ruling request was based upon a theoretical application of the apparatus. Heading 8525, HTSUS, is no longer relevant to the classification of the good. As the NIU receives, modulates, demodulates and transmits voice or voiceband data (fax), it is wholly covered by the terms of heading 8517, HTSUS, and is classified therein. Accordingly, NY C87716 is incorrect. CBP has classified other such apparatus that are part of a telephony distribution system designed to deliver integrated line telephony over hybrid fiber-coax networks. See NY J83173 (May 7, 2003); NY J83595 (May 7, 2003) and NY J83596 (May 7, 2003). Though the units classified therein had four lines of telephony and may be provisioned for cable TV service and data transmission (via a specialized feature), heading 8517, HTSUS, was determined to be the appropriate classification. Other devices that transmit communications signals through coaxial cable lines are also classified in heading 8517, HTSUS. See HQ 964524 (October 22, 2001) (classifying cable modems).

Next, to determine the proper subheading under heading 8517, we apply GRI 6, which allows for the application of the legal notes at the subheading level, unless context otherwise requires. Only subheadings at the same level are comparable. The NIU is clearly provided for in the 6-digit subheading 8517.50, HTSUS, which provides for “Other apparatus, for carrier-current line systems or for digital line systems.” As the unit transmits voice and data, it is covered by the 8-digit subheadings for telephonic apparatus and for telegraphic apparatus, we must apply Note 3 to Section XVI, *supra*.

In reviewing the descriptive literature, we cannot determine which is the principal function. Therefore, we apply GRI 3(c), as discussed above, to classify the unit in subheading 8517.50.90, which provides for “Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line systems; videophones; parts thereof: Other apparatus for carrier-current line systems or for digital line systems: Other: Telegraphic.” This is consistent with NY J83173, NY J83595 and NY J83596, *supra*.

HOLDING:

The Network Interface Unit, now known as the Voice Port, is classified in heading 8517, HTSUS. It is specifically provided for in subheading 8517.50.9000, HTSUSA, as “Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carrier-current line systems or for digital line

systems; videophones; parts thereof: Other apparatus for carrier-current line systems or for digital line systems: Other: Telegraphic: Other." The 2005 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 World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY C87716, dated May 18, 1998, is hereby REVOKED.

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

**REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF CERTAIN
SOCKS AND OTHER HOSIERY**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of certain socks, other hosiery, and/or footwear without applied soles.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is revoking a ruling letter pertaining to the tariff classification of certain socks, other hosiery, and/or footwear without applied soles, and revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published on August 10, 2005, in the *Customs Bulletin*, Volume 39, Number 33. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 4, 2005.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Tariff Classification and Marking Branch, at (202) 572-8811.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI") became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from

the law are “**informed compliance**” and “**shared responsibility**.” These concepts are premised on the idea that, in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. § 1625(c)(1)), a notice proposing to revoke New York Ruling Letter (NY) 809412, dated April 28, 1995, was published on August 10, 2005, in the *Customs Bulletin*, Volume 39, Number 33. No comments were received in response to the notice. As stated in the notice of proposed revocation, the notice covered any rulings relating to the specific issues of tariff classification set forth in the ruling, which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, an internal advice memorandum or decision, or a protest review decision) on the issues subject to the 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 the notice period. An importer’s failure to advise CBP of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision on this notice.

In NY 809412, dated April 28, 1995, items identified as “Disposable Foot Socks” and made of 100 percent nylon knit fabric were classified in subheading 6307.90.9989, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for “Other made up articles, including dress patterns: Other: Other, Other: Other.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY 809412 and any other rulings not specifically identified, to reflect the proper classification of the disposable foot socks according to the analysis in Headquarters Ruling Letter (HQ) 967810, which is set forth as the

“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: September 19, 2005

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967810
September 19, 2005
CLA-2 RR:CTF:TCM 967810 GGD
CATEGORY: Classification
TARIFF NO.: 6115.93.9020

MR. ED SHAPIRO
CSL, INC.
4500 West 31st Street
Chicago, Illinois 60623-4836

RE: Revocation of NY 809412; Disposable Foot Socks; Socks and Other Hosiery Including Footwear Without Applied Soles; Heading 6115; Not Other Made Up Textile Articles.

DEAR MR. SHAPIRO:

In New York Ruling Letter (NY) 809412, issued to you April 28, 1995, goods described as “Disposable Foot Socks” were classified in subheading 6307.90.9989 (now 6307.90.9889), Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provided for “Other made up articles, including dress patterns: Other: Other: Other: Other.” We have reviewed NY 809412 and have found it to be in error. Therefore, this ruling revokes NY 809412.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY 809412 was published on August 10, 2005, in the *Customs Bulletin*, Volume 39, Number 33. No comments were received in response to the notice.

FACTS:

In NY 809412, the two samples at issue were described as tubular “Disposable Foot Socks” made of 100 percent nylon knit fabric, one of which measured approximately 15 centimeters (cm.) long by 4.5 cm. wide, the other approximately 10 cm. long by 8 cm. wide, and each had one of its ends sewn closed. The items could be stretched when put on the foot. They were to be worn while trying on shoes in a shoe store, then disposed of after use.

ISSUE:

Whether the merchandise identified as “Disposable Foot Socks” is properly classified as other made-up textile articles in subheading 6307.90.9889, HTSUSA; or as “. . . socks and other hosiery, including . . . footwear without applied soles” in subheading 6115.93.9020, HTSUSA.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

Among other merchandise, chapter 64, HTSUSA, covers footwear. Note 1(b) to chapter 64 states that “[t]his chapter does not cover: Footwear of textile material, without an outer sole glued, sewn or otherwise affixed or applied to the upper (section XI).” Section XI, HTSUSA, the section under which chapters 61 and 63 fall, covers textiles and textile articles. Note 1(n) to section XI states that “[t]his section does not cover: Footwear or parts of footwear, gaiters or leggings or similar articles of chapter 64.” Chapter 61, HTSUSA, covers articles of apparel and clothing accessories, knitted or crocheted. Chapter 63, HTSUSA, covers other made up textile articles, needlecraft sets, worn clothing, worn textile articles, and rags. Among other goods, heading 6115, HTSUSA, covers “. . . stockings, **socks and other hosiery, including . . . footwear without applied soles. . .**” [Emphasis added.] Heading 6307, HTSUSA, covers “Other made up articles, including dress patterns.” In pertinent part, the EN to heading 6307 state that “[t]his heading covers made up articles of any textile material which are **not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature.” [Emphasis in original.]

The “Disposable Foot Socks” at issue are textile articles designed to be worn inside other footwear for sanitary purposes. The articles appear to constitute “socks and other hosiery, including . . . footwear without applied soles,” goods which are specifically named in the text of heading 6115, HTSUSA. As indicated by the EN to heading 6307, made up textile articles that are included more specifically in other headings of Section XI (e.g., heading 6115) are not covered by heading 6307.

CBP has issued several rulings that support classification of the “Disposable Foot Socks” under heading 6115, HTSUSA, as “stockings, socks and other hosiery, including . . . footwear without applied soles, knitted or crocheted.” *See, e.g.*, NY D82252, dated September 23, 1998 (knitted disposable foot sock used for sanitary purposes by potential buyers in retail shoe stores, then thrown away, classified in subheading 6115.93.9020); NY H80268, dated May 18, 2001 (knitted disposable tube socks classified in subheading 6115.93.9020); NY R00232, dated April 28, 2004 (knitted tube sock with plastic traction dots classified in subheading 6115.93.9020); and NY L83047, dated April 8, 2005 (knitted slipper sock without separately applied outer sole classified in subheading 6115.93.9020).

In light of the above analysis and of CBP's consistent classification treatment of goods substantially similar to the "Disposable Foot Socks," we find that the items are classified in subheading 6115.93.9020, HTSUSA.

HOLDING:

The items identified as "Disposable Foot Socks" are classified in subheading 6115.93.9020, HTSUSA, the provision for "Panty hose . . . stockings, socks and other hosiery, including . . . footwear without applied soles, knitted or crocheted: Other: Of synthetic fibers: Other: Other, Other." The general column one duty rate is 14.6 percent ad valorem.

Merchandise classified in subheading 6115.93.9020, HTSUSA, falls within textile category 632. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web site at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at <http://otexa.ita.doc.gov>.

NY 809412, dated April 28, 1995, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

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

**MODIFICATION OF RULING LETTER AND REVOCATION
 OF TREATMENT RELATING TO TARIFF CLASSIFICATION
 OF A CARRYING CASE**

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

ACTION: Notice of modification of a tariff classification ruling letter and revocation of treatment relating to the classification of a carrying case.

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 modifying one ruling letter relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a "Survival Kit 2" carrying case. Similarly, CBP is re-

voking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed modification was published on August 10, 2005, in Volume 39, Number 33, of the CUSTOMS BULLETIN. No comments were received.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse or for consumption on or after December 4, 2005.

FOR FURTHER INFORMATION CONTACT: Shirley Greitzer, Textile Classification and Marking Branch: (202) 572-8823.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on August 10, 2005, in the CUSTOMS BULLETIN, Volume 39, Number 33, proposing to modify one ruling letter, New York Ruling Letter (NY) L81479, and to revoke any tariff treatment pertaining to the tariff classification of the carrying case component of the "Survival Kit 2" carrying case and stand. No comments were received in response to this notice.

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

decision, or protest review decision) on the merchandise subject to this notice, should have advised CBP during the comment period.

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY L81479, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967510. HQ 967510, modifying NY L81479, is 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 merchandise.

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

DATED: September 19, 2005

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967510
September 19, 2005
CLA-2 RR:CR:TE 967510
CATEGORY: Classification
TARIFF NO.: 4202.92.5000

MR. DENNIS HECK
IMPORT COMPLIANCE MANAGER
YAMAHA CORPORATION OF AMERICA
6600 Orangethorpe Ave.
P.O. Box 6600
Buena Park, CA 90622-6600

RE: Request for Reconsideration of NY L81479, dated December 22, 2004;
"Survival Kit 2" Carrying Case; Modification; 4202.92.5000, HTSUSA

DEAR MR. HECK:

This is in reply to your request dated January 10, 2005, to Customs and Border Protection's (CBP's) National Commodity Specialist Division, for recon-

sideration of New York Ruling Letter (NY) L81479, dated December 22, 2004, concerning the classification of the carrying case component of the "Survival Kit 2". You contend that the carrying case is classified under subheading 4202.92.5000, HTSUSA. In NY L81479, CBP determined that the "Survival Kit 2", consisting of a nylon textile keyboard carrying case with shoulder strap and an X-Style collapsible keyboard stand was not a set and that each article was separately classified. The X-Style keyboard stand was classified in subheading 9209.94.4000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Parts and accessories for the musical instruments of heading 9207: collapsible musical instrument stands." The carrying case was classified in subheading 4202.92.9026, HTSUSA, the provision for other containers and cases with outer surface of man-made fibers.

We have reviewed NY L81479 and find that the correct classification of the carrying case component of the "Survival Kit 2" is subheading 4202.92.5000, HTSUSA, the provision for musical instrument cases. Therefore, this ruling modifies NY L81479.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 1993), notice of the proposed modification of NY L81479 was published on August 10, 2005, in Vol. 39, Number 33, of the CUSTOMS BULLETIN. CBP received no comments.

FACTS:

The submitted sample is a zippered soft-sided nylon textile case. It has a padded middle layer and a nylon textile lining. The case measures approximately 46 inches by 20 inches by 2 inches. There is an outside zippered pocket approximately 12 inches by 12 inches and two inches in depth on one side of the bag. In addition it has an outside zippered compartment. The packaging states that the case fits all 49 and 61 key Yamaha portable keyboards.

ISSUE:

What is the proper classification of the "Survival Kit 2" carrying case?

LAW AND ANALYSIS:

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 Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings.

Heading 4202, HTSUSA, provides for: 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.

“Musical instrument cases” are specifically provided for in subheading 4202.92.5000, HTSUSA.

You advise that the keyboard carrying case is specifically designed, marketed, and sold exclusively for certain Yamaha model electronic keyboards classified in heading 9207, which covers musical instruments, the sound of which must be electronically amplified. You state that CBP has ruled that electronic keyboard carrying cases are classified in subheading 4202.92.5000, HTSUSA. See Port Decision (PD) C84466, dated February 26, 1998, NY 872322, dated March 30, 1992, and NY K80829, dated December 15, 2003.

The sample before us is a soft-sided carrying case specially designed to provide storage, protection and portability for 49 key and 61 key portable electronic keyboards. CBP has ruled that keyboards with 49 keys are musical instruments (NY K88356 (August 3, 2004)), and that a Yamaha electronic keyboard is a musical instrument (NY C88491 (June 19, 1998)).

The zippered keyboard case is designed to contain keyboards similar to those above. It is suitable to effectively transport a keyboard, while it organizes, stores and protects it. As such the zippered case bears substantial similarity to musical instrument cases and it is properly classified in subheading 4202.92.5000, HTSUSA.

HOLDING:

NY L81479, dated December 22, 2004, is hereby MODIFIED.

The “Survival Kit 2” carrying case is classified in subheading 4202.92.5000, HTSUSA, the provision for “. . . musical instrument cases . . . : Other: With outer surface of sheeting of plastic or of textile materials: Musical instrument cases.” The general column one duty rate is 4.2% ad valorem.

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

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