

*What Every Member of the
Trade Community Should Know About:*

The Importation of Tableware, Kitchenware, Other Household Articles and Toilet Articles of Plastics



AN INFORMED COMPLIANCE PUBLICATION

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “***informed compliance***” and “***shared responsibility***,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings (ORR) has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications, and videos, on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the National Commodity Specialist Division, ORR, is tableware, kitchenware and other household articles and toilet articles, of plastics.. “The Importation of Tableware, Kitchenware, Other Household Articles and Toilet Articles of Plastics” provides guidance regarding the classification of imported merchandise. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

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INTRODUCTION

When goods are imported into the Customs Territory of the United States (the fifty states, the District of Columbia and Puerto Rico), they are subject to certain formalities involving the Bureau of Customs and Border Protection (CBP or Customs). In almost all cases, the goods are required to be “entered,” that is, declared to CBP, and are subject to detention and examination by CBP to insure compliance with all laws and regulations enforced or administered by CBP and the Bureau of Immigration and Customs Enforcement (BICE). As part of the entry process, goods must be “classified” (determined where in the U.S. tariff system they fall) and their value must be determined. Pursuant to the Customs Modernization Act, it is now the responsibility of the importer of record to use “reasonable care” to “enter,” “classify” and “value” the goods and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics, and determine whether all other applicable legal requirements are met.

Classifying goods is important not only for duty purposes, but also to determine whether the goods are subject to quotas, restraints, embargoes or other restrictions. The act of classifying goods is complex and requires an importer to be familiar with the *Harmonized Tariff Schedule of the United States* (HTSUS), its 99 chapters, rules of interpretation, and notes. A detailed discussion of the HTSUS may be found in a companion publication entitled, *What Every Member of the Trade Community Should Know about Tariff Classification*. Customs valuation requirements are separately discussed in a companion publication entitled, *What Every Member of the Trade Community Should Know about Customs Value*. Both of these publications are available from the Customs Electronic Bulletin Board and Customs World Wide Web pages on the Internet (see the Appendix for information on accessing these sources and obtaining additional Customs publications).

The purpose of this Informed Compliance publication is to advise importers, customs brokers and others of the various issues affecting the importation and tariff classification of tableware, kitchenware, other household articles and toilet articles, of plastics. Most of the articles discussed in this publication are classified in heading 3924 (Tableware, kitchenware, other household articles and toilet articles, of plastics) which is found in Chapter 39, HTSUS, which covers “Plastics and Articles Thereof.”

The following table shows heading 3924 and its subheadings:

3924	Tableware, kitchenware, other household articles and toilet articles, of plastics:
3924.10	Tableware and kitchenware:
3924.10.10	Salt, pepper, mustard and ketchup dispensers and similar dispensers

3924.10.20		Plates, cups, saucers, soup bowls, cereal bowls, sugar bowls, creamers, gravy boats, serving dishes and platters
3924.10.30		Trays
3924.10.40		Other
3924.90	Other:	
3924.90.10		Curtains and drapes, including panels and valences; napkins, table covers, mats, scarves, runners, doilies, center-pieces, antimacassars and furniture slipcovers; and like furnishings
3924.90.1010		Curtains and drapes
3924.90.1050		Other
3924.90.20		Picture frames
3924.90.55		Other.

This publication will specifically address the scope of the “other” subheadings found in heading 3924 of the Harmonized Tariff Schedule of the United States (HTSUS).

Situations in which merchandise that is classifiable in subheading 3924.10.40, HTSUS, or subheading 3924.90.55, HTSUS, overlaps with similar types of merchandise classifiable in other subheadings will also be examined.

This publication cannot be an exhaustive study of the problems connected with subheadings 3924.10.40, HTSUS, and 3924.90.55, HTSUS, since a vast number of products could be classified in these subheadings. We cannot even imagine at this time what some of the items classifiable in these two provisions may be. This is only a survey of merchandise that has thus far been classified in subheadings 3924.10.40, HTSUS, and 3924.90.55, HTSUS.

In addition to classification, we will briefly address invoicing and marking as these topics relate to subheadings 3924.10.40, HTSUS, and 3924.90.55, HTSUS. In order to make a proper classification determination, adequate invoice descriptions are essential. In addition to invoicing, country of origin marking requirements will be discussed in this publication.

Heading 3924 of the HTSUS provides for “tableware, kitchenware, and other household articles and toilet articles of plastics.” This heading encompasses four different categories of plastic products. All the articles classifiable in heading 3924 are primarily utilitarian.

Tableware: Includes articles that are used on the table for the serving and eating of food. These may be used in the home, restaurant, institution or elsewhere as long as they are used on the table. The “tableware and kitchenware” category is subdivided into four different eight-digit subheadings, namely:

- “salt, pepper, mustard and ketchup dispensers and similar dispensers” (subheading 3924.10.10);
- “plates, cups, saucers, soup bowls, cereal bowls, sugar bowls, creamers, gravy boats, serving dishes and platters” (subheading 3924.10.20);
- “trays” (subheading 3924.10.30); and
- “other” (subheading 3924.10.40).

Kitchenware: Includes articles that are used in the kitchen for the preparation or storage of food or beverages (spatulas, ladles, measuring cups, measuring spoons, plastic food storage containers, etc.). Again, these articles may be used in the home, restaurant, institution or elsewhere as long as they are used in the kitchen for the preparation or storage of food. Kitchenware is classified mainly in subheading 3924.10.40, HTSUS.

Other Household Articles: Includes any article principally used in or around the home and not more specifically provided for elsewhere in the Harmonized Tariff Schedule. These articles may be used inside the home, on the porch, in the back yard etc. The “other” household articles and toilet articles category is subdivided into three different eight-digit subheadings, namely:

- “curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars and furniture slipcovers; and like furnishings” (3924.90.10),
- “picture frames” (subheading 3924.90.20) and
- “other” (subheading 3924.90.55).

Toilet Articles: Includes articles used in washing and grooming, not more specifically provided for elsewhere in the HTSUS. They may be used in the home, outside of the home, or may be carried on the person. Toilet articles are classified mainly in subheading 3924.90.55, HTSUS.

The classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRI’s), taken in order. Most goods are classified by application of GRI 1, which states in part that for legal purposes classification shall be determined according to the terms of the headings and any other relative section or chapter notes. Where 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’s will be applied in order.

The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI’s. While not legally binding, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-90, 54 Fed. Reg. 35127,

35128 (August 23, 1989). It has therefore been the practice of Customs to follow, whenever possible, the terms of the Explanatory Notes when interpreting the HTSUS.

It is not easy to give rules for classification when dealing with an “articles” provision. Subheadings 3924.10.40 (other tableware and kitchenware) and 3924.90.55 (other household articles and toilet articles) are no exceptions. One question that must be answered is whether the article is more specifically described elsewhere. Generally, an article should be classified in the provision that most specifically describes the item. Of course, when classifying any article, attention must be given to the relevant legal notes. For example, Chapter 39, legal note 2(ij) excludes goods found to be of a kind similar to those of heading 4202 from being classified in heading 3924. Heading 4202 includes trunks, suitcases, handbags or other containers. Therefore it is necessary to determine whether or not a good is classifiable within heading 4202 before heading 3924 can be considered.

The Court of International Trade in *Totes, Inc. vs. United States*, 865 F.Supp 867 (CIT 1994), *aff'd* 69 F.3d 495 (Fed. Cir. 1995) determined that heading 4202 is broadly interpreted. The Court held that an imported good will be found to be *ejusdem generis*, or of the same class or kind, as the goods cited in the heading or its notes so long as the good possesses the essential character or purpose which unites the articles enumerated *eo nomine*. The characteristics of the goods of heading 4202 are storage, protection, and organization. Portability is a factor only at the subheading level. Basically, goods that are designed to provide storage, protection, organization and portability are goods that are of a kind similar to those of heading 4202. Such goods are usually for personal use on a continuing basis over a period of time. Several of the classification issues addressed in this ICP concern the applicability of heading 4202 to articles which might seem to be included in heading 3924.

Most of the classification concerns occurring under heading 3924, HTSUS, are under subheading 3924.90.55, HTSUS, “other household and toilet articles, of plastics: other.” However, there are several issues under subheading 3924.10.40, HTSUS, “tableware and kitchenware, of plastics: other,” which will be addressed here.

TABLEWARE AND KITCHENWARE: SUBHEADING 3924.10.40

GENERAL

Subheading 3924.10.40, HTSUS, provides for other tableware and kitchenware of plastics. Thus, all tableware and kitchenware of plastics which do not fall within the eight-digit subheadings for “salt, pepper, mustard and ketchup dispensers and similar dispensers” (3924.10.10); “plates, cups, saucers, soup bowls, cereal bowls, sugar bowls, creamers, gravy boats, serving dishes and platters” (3924.10.20); or “trays” (3924.10.30) is classified as “other” (3924.10.40). This subheading is a “basket” provision encompassing a large array of products for the home, restaurant or the commercial or institutional setting.

The ENs to heading 3924 describe a variety of articles used both in serving and eating food. The ENs reference tea or coffee services, dishes and plates, soup tureens, salad bowls, trays, tea and coffee-pots, sugar bowls, beer mugs, cups, sauce-boats, fruit bowls, cruets, salt cellars, mustard pots, egg-cups, teapot stands, table mats, knife rests, serviette rings, knives, forks and spoons. Kitchenware includes articles utilized in the preparation and storage of food. The ENs also reference basins, jelly molds, kitchen jugs, storage jars, bins and boxes (tea caddies, bread bins, etc.), funnels, ladles, kitchen-type capacity measures and rolling-pins.

Mugs for coffee, beer, etc., are classified in subheading 3924.10.40, HTSUS. They are not classified as cups in subheading 3924.10.20, HTSUS.

INSULATED COOLER BAGS

In *SGL, Incorporated v. United States*, 122 F.3d 1468 (Fed. Cir. 1997), the U.S. Court of Appeals for the Federal Circuit (CAFC) determined that certain portable, insulated cooler bags, made of plastics materials, used primarily for the storage of food or beverages at a desired temperature over a period of time, were classified in subheading 3924.10.50(now 3924.10.40) HTSUS, the residual provision for “Tableware and kitchenware.” Headquarters issued instructions on March 18, 1998, to Customs field personnel, and also disseminated them to the importing community. The principles of the CAFC decision were extended to portable, hard or soft-sided, insulated coolers and similar containers, whether made of plastics or textiles. The principles were also extended to such articles even when they contained additional features such as exterior or interior pockets, straps, webbing, etc., to hold items other than foodstuffs, as long as the extra features did not change the container’s primary function to store and preserve food and/or beverages at a desired temperature over a period of time.

However, pursuant to Presidential Proclamation 7515 of December 18, 2001, which became effective January 10, 2002, the term “insulated food or beverage bags” was included in the text of heading 4202, HTSUS. A new eighth paragraph was inserted in the Explanatory Notes to heading 4202 stating that “The expression ‘insulated food or beverage bags’ covers reusable insulated bags used to maintain the temperature of foods and beverages during transport or temporary storage.” This change requires that all insulated food and beverage bags and similar containers, entered on or after January 10, 2002, be classified under heading 4202, HTSUS. Two subheadings have been created specifically for insulated food and beverage bags. Subheading 4202.92.05, HTSUS, covers insulated food and beverage bags with an outer surface of textile materials and subheading 4202.92.10, HTSUS, covers bags with an outer surface of other materials such as plastics or fabric-backed compact plastics.

Although insulated food and beverage bags are now classifiable in heading 4202, cooler bags made entirely of rigid plastics, primarily designed for the preservation of food and beverages at a desired temperature over a period of time, remain classified in subheading 3924.10.40, HTSUS.

OTHER HOUSEHOLD ARTICLES AND TOILET ARTICLES, OF PLASTICS: SUBHEADING 3924.90.55

GENERAL

Subheading 3924.90.55, HTSUS, provides for other household articles and toilet articles, of plastics, other. All the plastic household articles and toilet articles which do not fall within the eight-digit subheadings for “curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars and furniture slipcovers; and like furnishings” (3924.90.10) or “picture frames” (3924.90.20) will be classified in the “other” (3924.90.55) or “basket” provision.

The Explanatory Notes to heading 3924 describe a variety of articles utilized around the home such as ash trays, hot water bottles, matchbox holders, dustbins, buckets, watering cans, curtains, drapes, table covers and fitted furniture dust-covers (slipovers).

“Toilet” is defined as, “the act or process of dressing; the process of washing, grooming, and arranging oneself for the day’s activities or for a special occasion” by *Webster’s New World Dictionary*, Second College Edition. The same source defines “toiletry” as “an article or preparation used in making one’s toilet (as a soap, lotion, cosmetic, toothpaste, shaving cream, cologne).” A bar of soap is a toilet article used by an individual in a shower, bathtub, or sink. The term “toilet articles” (whether for domestic or non-domestic use) is referenced in the ENs 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. Articles intended for permanent installation in or on walls or other parts of buildings by the use of adhesives, screws, nails, bolts, etc. are excluded (see heading 3925).

BUILDERS’ WARE

The Explanatory Notes to heading 3924 indicate that articles of that heading are of the type not intended for permanent installation in or on walls. Articles such as towel holders, tooth-brush holders, toilet paper holders, towel hooks and similar articles for bathrooms, toilets or kitchens, intended for permanent installation in or on walls or other parts of buildings, are excluded from classification in heading 3924 and are instead classified in heading 3925, HTSUS, which provides for other builders’ ware of plastics, not elsewhere specified or included. As defined in the ENs, “permanent installation” includes installation by screws, nails, bolts or adhesives.

Therefore, a paper towel holder that stands on the counter is classified in heading 3924, while a paper towel holder which is screwed into the wall is classified in heading 3925. A soap dish or toothbrush holder designed to be placed on the sink is classified in heading 3924, while a soap dish or toothbrush holder designed to be nailed

to the wall is classified in heading 3925. A hook which hangs over the top of a door, or one which attaches to the shower with a suction backing, is classified in heading 3924, while a hook with an adhesive back which bonds to the door or wall is classified in heading 3925, and so forth.

Other articles that are intended for permanent installation are also provided for in heading 3925, even though they are principally used in and around the home. These articles include doorknobs and handles, ornamental architectural features such as ceiling medallions, shutters, blinds, balconies, fencing and gates.

MAGNETIC ARTICLES

Many articles today incorporate magnets. This is particularly true in the case of decorative items such as refrigerator magnets and other magnetic memo holders. Classification of such articles can often be a challenge. Headquarters has addressed this issue in a number of rulings during the last several years. In essence, this type of merchandise is considered a composite article, and classification is governed by a determination of “essential” character as specified in GRI 3(b). The competing tariff provisions usually involve one of the subheadings for magnets (8505.11.00 if of metal; 8505.19.00 if of other than metal) and a subheading which covers the material component of the non-magnetic portion (e.g., plastic) or, in some cases, the utilitarian feature of the item, such as a spring clip. A review of some significant recent rulings issued by Headquarters follows, which should provide some insight into this issue.

Headquarters Ruling Letter (HQ) 953264, dated March 30, 1994, concerned the classification of a memo magnet and a hook magnet designed to be attached to a refrigerator, oven or other metal surface. The items are considered to be composite goods because they each consist of a magnet and plastic component. The goods are *prima facie* classifiable in heading 8505, HTSUS, as a magnet and in heading 3924, HTSUS, as a household article of plastic. Because classification in a single heading cannot be determined by applying GRI 1, the other GRI's must be used. GRI 2(b) states that if a product is a mixture or combination of materials or substances that are *prima facie* classifiable in two or more headings, then GRI 3 applies. Under GRI 3(a), the headings are equally specific and thus it fails to establish classification. Moving onto GRI 3(b), we have to determine which component provides the essential character. In the case of both items, the essential character is imparted by the permanent magnet since removing it from either article would not allow it to function as a magnetic memo holder or hook for metallic surfaces. The plastic portion merely embellishes the product and acts as a decorative selling feature but has no effect on each item's ability to perform its intended function. Therefore, the memo magnet and hook magnet were classified as magnets in heading 8505, HTSUS, in accord with GRI 3(b).

In HQ 960004, dated January 30, 1997, the essential character of a plastic key holder with attached magnet was determined to be imparted by the magnet. Removal of the magnet from the article would leave the product totally incapable of functioning as a magnetic key holder for metallic surfaces such as refrigerators, automobile bumpers,

and sheds. Without the magnet, the plastic portion would have little, if any, use. The product was classified in subheading 8505.19.00, HTSUS, as a permanent magnet.

On the other hand, in HQ 958955, dated May 9, 1996, HQ ruled that the essential character of a photo frame with a rubber ferrite magnet attached to its back was imparted by the picture frame. The frame was considered to be the component that distinguishes the article. The frame fulfills the article's function, housing the photograph. The magnet merely allows the frame to adhere to metal objects. Without the magnet, the frame still can display the photograph. The magnetic photo frame was ruled to be properly classifiable in subheading 3924.90.20, HTSUS, which provides for "tableware, kitchenware, other household articles and toilet articles, of plastics: other: picture frames."

Another ruling on a magnetic article in which the magnet was not considered to impart the essential character was NY 816855, dated December 21, 1995, in which a plastic bandage strip dispenser with magnet was classified in subheading 3924.90.55, HTSUS.

GARMENT BAGS

The first step in classifying garment bags is to determine whether they are described by heading 4202, since Chapter 39, legal note 2(ij), precludes any article which is provided for in heading 4202 from classification in chapter 39. Examples of garment bags classifiable in subheading 3924.90.55 rather than in heading 4202 are quilted multi-garment bags of flexible plastic sheeting designed to be hung in a closet and not designed to be carried with the person by means of a hanger. Garment bags that are designed for travel rather than storage are properly classifiable in heading 4202. It has consistently been the position of the Customs Service and now CBP to view substantiality of construction as essential to determining whether an item is suitable for travel, and thus designated as luggage. Some of the criteria which might be considered to determine whether a garment is of substantial construction include the type of plastic (e.g., vinyl generally being more substantial than polyethylene); the type and quality of seams (e.g., heat sealed versus stitched); and the thickness of the material.

Customs decisions HQ 955470, dated February 17, 1994, HQ 960411, dated October 7, 1997, and HQ 961092, dated March 24, 1998, provide guidance as to the methodology utilized in determining whether a garment bag of plastic sheeting is designed for prolonged use and therefore designed for travel. In HQ 960411, HQ stated that "Usually, bags comprised of vinyl more than 4 mils in thickness denotes an article that has a durable construction and is designed for prolonged use and travel. Generally, garment bags that are comprised of vinyl less than 4 mils in thickness are indicative of less durable bags which are not designed for repetitive use." CBP has relied upon the methodology for determining thickness as provided by the American Society for Testing Materials (ASTM) Designation 1593.

In HQ 960411, referenced above, HQ ruled that various styles of garment bags, all measuring under 4 mils in thickness and all containing a store logo, were classified in subheading 3923.90.00, HTSUS. The items were considered to be not suitable for prolonged, repetitive use, and were considered to be designed, like a shopping bag, for consumers to use to protect their purchases during conveyance from the store to the home. It should be noted, however, that heading 3923 does not provide for garment bags that are used either for storage or for the transport of garments already in the possession of the consumer. Garment bags purchased empty at retail to be used for storage and occasional transport of garments, but not of sufficiently substantial construction to warrant classification in heading 4202, are classifiable in subheading 3924.90.55, HTSUS.

JEWELRY AND SIMILAR BOXES

It should be noted that jewelry boxes, cutlery boxes and similar containers or cases, are *eo nomine* exemplars of heading 4202, HTSUS, and therefore are subject to Chapter 39, Legal Note 2(ij). Care should be taken to eliminate classification under heading 4202 before resorting to heading 3924, HTSUS. Such or similar containers or cases are classified in the first half of heading 4202 if they are designed for travel such as a travel jewelry case. If for household storage only, the good is classifiable in the second half of heading 4202 if of one of the named materials or wholly or mainly covered with such materials or with paper. The only variety of such goods excluded from heading 4202, and consequently included in heading 3924, are those which are only for storage in the home and are manufactured of a hard rigid plastics material not covered on the exterior with a named material of the second half of heading 4202.

SHEETING VS. ARTICLES

Heading 3924 is limited to articles that do not meet the requirements for classification in one of the earlier headings of chapter 39. Therefore, any household articles which meet the definition of sheet in headings 3920 or 3921 are classifiable as sheet in those headings. Note 10 to Chapter 39 states, "In headings 3920 and 3921, the expression 'plates, sheets, film, foil and strip' applies only to plates, sheets, film, foil and strip (other than those of chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked (e.g., polished, embossed, colored, merely curved or corrugated), uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready to use, e.g., tablecloths)." The Explanatory Notes to headings 3920 and 3921 state, "Plates, sheets, etc., whether or not surface-worked (including squares and other rectangles cut therefrom), with ground edges, drilled, milled, hemmed, twisted, framed or otherwise worked or cut into shapes other than rectangular (including square) are generally classified as articles of headings 39.18, 39.19 or 39.22 to 39.26."

Several household articles that frequently meet the definition of sheet of headings 3920 or 3921 are sponges and tablecloths. These articles, when in the form of a square or rectangle which has not been further worked, are classifiable as sheet.

Most common household-type sponges are made of regenerated cellulose, a plastic material. Sponges have also been made of polyvinyl alcohol (PVA). When sponges made of cellular plastics are imported in the form of squares or rectangles, they are classifiable as cellular sheet in heading 3921. When imported in shapes such as ovals, they are precluded from classification as sheet and instead are classifiable as other household articles in subheading 3924.90.55, HTSUS. (See New York Ruling Letter (NY) 810115, dated May 9, 1995, in which rectangular PVA sponges were classified in subheading 3921.19.00, HTSUS, while the same sponges, with rounded edges, were classified in subheading 3924.90.55, HTSUS.) Inexpensive picnic tablecloths and bench covers consisting of rectangular sheets of plastics which have not been hemmed or otherwise further worked are classifiable in heading 3920. Place mats are also occasionally imported in the form of rectangular sheets of either heading 3920 or heading 3921.

MESH BODY PUFFS

There has been some confusion on the classification of mesh body puffs or sponges. These articles are generally made of extruded polyethylene netting, tied into a puff, with a cord affixed to the center of the article for hanging. Though on first glance the netting may appear to be a textile, it is made from polypropylene netting formed by extruding softened thermoplastic through a shaped die or spinneret. The mesh is not made from a pre-existing textile filament, but is considered to be of plastics. This type of sponge was the subject of NY 883211, dated March 22, 1993, and is classifiable under subheading 3924.90.55, HTSUS.

UTILITARIAN VS. DECORATIVE ARTICLES

Another subject that has caused errors in classification is the issue of decorative vs. utilitarian articles. The Explanatory Notes to heading 3924, in addition to tableware, kitchenware, and toilet articles, describe "Other household articles such as ash trays, hot water bottles, matchbox holders, dustbins, buckets . . . table covers, and fitted furniture covers (slipovers)." Articles classifiable in heading 3924, HTSUS, are primarily utilitarian, rather than primarily decorative or ornamental. Highly decorative cups, dishes, etc. remain classified in heading 3924 as long as they are functional. However, heading 3924 does not include statuettes, wall plaques or other primarily decorative objects, even when they are intended for the home.

HQ 953032, dated December 31, 1992, modified NY 850002, issued March 27, 1990. The items consisted of clear plastic; liquid-filled globes embedded in plastic bases, each containing a costumed figure in a particular scene. Shaking the globe caused flecks or tiny objects to float around the figure. Water globes have no utilitarian function. They are primarily decorative, and are therefore excluded from classification in heading 3924, HTSUS. Headquarters reclassified the three water globes in subheading 3926.40.00, HTSUS, the provision for other articles of plastics... statuettes, and other ornamental articles.

The Explanatory Notes to heading 3926 indicate that the heading covers articles of plastics or other materials not elsewhere included or specified, including (among other items) statuettes and other ornamental articles. Plastic water globes, statuettes and other items used around the home which have little or no utilitarian function are classified in subheading 3926.40.00, HTSUS, and not subheading 3924.10.40, HTSUS, or subheading 3924.90.55, HTSUS.

OFFICE TYPE ARTICLES

Heading 3924 is limited to articles of a class or kind principally used in the home, and does not include articles used for activities associated with office work rather than domestic life. Articles marketed for use in the “home office” generally belong to a class or kind of merchandise principally used outside of the home, in an office. Such articles are properly classified in subheading 3926.10.00, HTSUS, which provides for other articles of plastics...office or school supplies, rather than in subheading 3924.90.55, HTSUS.

NY 857310, dated October 30, 1990, covered a roll-top desktop storage case, designed to hold up to eighty 3 1/2 inch computer diskettes. It was described as “for use in both the office and the home.” The storage case was classified in subheading 3926.10.00, HTSUS. The subject of NY 895868, dated March 30, 1994, was a file box, without a handle, used for storage. Though described as intended for home office use, the box was of a class or kind of organizer principally used in an office. This box was also classified in subheading 3926.10.00, HTSUS, as other articles of plastics...office or school supplies.

SETS

Various items have been considered to be sets under subheadings 3924.10.40 and 3924.90.55. A napkin ring set consisting of four napkin rings composed of fiberglass-reinforced plastic and four 100 percent cotton napkins was the subject of HQ 084894, dated September 5, 1989. The item was ruled to be a set within the meaning of GRI 3, the essential character being imparted by the napkin rings (i.e., what gives the set that unique quality that makes it distinctive and sparks consumer interest to purchase the item). Under GRI 3(b), articles made up of different components shall be classified as if they consisted of the component that gives them their essential character. The essential character is determined by the nature of the material or component, its bulk, quantity, weight, value or by the role of the constituent material in relation to the use of the goods. See EN GRI 3(b)(VIII). Based on those elements, the set was classified under subheading 3924.10.50 (now 3924.10.40), HTSUS, the provision applicable to the plastic napkin rings. It is important to note that textile articles, such as the cotton napkins, contained in sets classifiable under GRI 3 are subject to visa requirements, in this case category 369.

In the above set it is obvious that the napkins and napkin rings will be used together for one purpose. There are many so-called sets, however, which claim

classification under subheading 3924.10.40 and 3924.90.55, but are not classifiable as sets at all. Generally they have items classifiable under two or more subheadings and are sold together at retail but they are not put up for a single purpose. They are intended to serve several different purposes.

HQ 950609, dated January 7, 1992, classified a kitchen organizer set under subheadings 3924.10.5000 (now 3924.10.4000), 8205.51.3030, 7013.39.2000, and 8211.92.2000, HTSUS. The article is described as a “27 piece ultimate organizer set” and consists of four measuring cups, five measuring spoons, one can opener, one bottle opener, one vegetable peeler, five melamine tools (spatula, slotted spoon, ladle, serving spoon, fork), one beater whipper (also known as a whisk) and eight spice bottles. All the articles are attached to a revolving holder that rests on a table or counter.

The ruling stated:

The articles included in the kitchen organizer are used for divergent purposes. Although the articles classifiable as plastic kitchenware, hand tools or knives relate to the preparation or serving of food or drink, the spice bottles are principally used to store food. See Headquarters’ Ruling 087727. Since the components of the kitchen organizer are put together to carry out several different activities or to meet various needs, they do not satisfy criterion (b) in Explanatory Note X to Rule 3(b). Since the kitchen organizer fails as a set, we return to GRI 1 to classify each component of the kitchen organizer separately.

HQ 960281 of August 22, 1997, classified the individual components of a “Bath in a Box Set” separately under the following numbers: subheadings 3924.90.5500; 6912.00.5000; 3924.90.1010; 9403.80.6040; 6303.92.2000, HTSUS. The items that comprise the set are a printed textile shower curtain with a vinyl liner and plastic shower curtain rings, a printed plastic coated fabric wastebasket, a printed plastic hamper, a ceramic or plastic lotion dispenser, a ceramic or plastic toothbrush holder, a ceramic or plastic tumbler, a ceramic or plastic tissue cover, and a ceramic or plastic soap dish. All items were packaged together, shipped and sold as a “Bath In A Box Set” and all pieces in the set will be color coordinated and designed to match.

The Explanatory Notes for GRI 3(b), provide, in part: “goods put up in sets for retail sale” shall be taken to mean goods which:

- a) consist of at least two different articles which are, *prima facie*, classifiable in different headings
- (b) consist of products or articles put together to meet a particular need or carry out a specific activity; and
- (c) are put up in a manner suitable for sale directly to users without repacking.

HQ 960281 states:

In this case, the subject articles meet criteria (a) and (c) since they are put up together for retail sale directly to users without repacking and are classifiable under more than one heading. However, at least several articles of the “set” perform functions unrelated to the functions performed by the other articles (e.g., the tumbler is for drinking; the hamper is used to hold articles prior to washing; and the lotion dispenser is to store and facilitate access to lotion).

A group of articles put up for retail sale either qualifies as one set or fails. Customs will not choose items out of a particular retail grouping and determine that these specific articles are classifiable as a set while the remaining articles that do not meet the requirements for the set are classifiable separately. See, HQ 954815, dated January 31, 1994, where Customs determined that articles of a “Personal Care Amenities Set,” which included a manicure stick, emery board, plastic cotton swabs with cotton balls, and a sewing kit containing thread, needle, buttons, and a safety pin were classified separately since they were dedicated to more than one purpose. HQ 954815 stated, “Customs will not attempt to construct a qualifying set or sets out of a failed set. When articles put up together are determined not to form a proper set for GRI 3(b), they are classified separately.”

Accordingly, the combined articles do not meet the requirements for classification as a set since all the articles in the “set” do not perform, or are not dedicated to, a single particular need or a single specific activity. Therefore, each article in the “Bath In A Box Set” is separately classifiable according to the applicable General Rule of Interpretation.

We have pointed out only a few of the problem areas with regard to heading 3924, HTSUS. When dealing with basket provisions under subheading 3924.10.40, HTSUS, and subheading 3924.90.55, HTSUS, it is impossible to foresee all the products that may properly be placed there and all the products that may be improperly entered there for whatever reason.

COUNTRY OF ORIGIN MARKING

The primary purpose of the country of origin marking statute is to “mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.” *United States v. Friedlaender & Co.*, 27 C.C.P.A. 297, 302, C.A.D. 104 (1940). The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as

legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser the English name of the country of origin of the article. Part 134 of the Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The “country of origin” for marking purposes is defined by section 134.1(b), Customs Regulations (19 CFR 134.1(b)), to mean the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the “country of origin.”

Neither the marking statute nor the regulations make any provision for the marking of sets. In the absence of any special requirements, the general country of origin marking requirements apply, i.e., every article that is imported into the U.S. must be marked to indicate its country of origin as determined by where the article underwent its last substantial transformation. Note T.D. 91-7, January 8, 1991.

According to T.D. 91-7, “if the materials or components are not substantially transformed as a result of their inclusion in a set or mixed or composite good, then subject to the usual exceptions, each item must be individually marked to indicate its country of origin.”

We should note that when NAFTA countries (the United States, Canada and Mexico) are involved there is a different set of rules regarding country of origin determination. The Annex 311 rules for determining the country of origin of NAFTA goods are set forth in 19 CFR Part 102. See T.D. 96-46, published in 61 Fed. Reg. 28932.

Often, better communication between the importer and manufacturer can remedy instances of not legally marked shipments by ensuring that items under HTSUS 3924 have labels that remain securely affixed or that cast-in the-mold lettering is discernable.

THE IMPORTER’S RESPONSIBILITIES

Since the enactment of the Customs Modernization Act in December, 1993, the legal burden of correctly classifying and valuing merchandise has shifted from CBP to the importer, who must use reasonable care in carrying out these responsibilities. Prior to importation the importer of record is responsible for determining a good’s constituent components and the principal use of the product in the United States. The importer is also responsible for insuring that the entered value is determined in accordance with the Customs valuation law.

When a plastic article consists of more than one component, the importer should be aware of the principles that govern decisions regarding a product’s essential character and should obtain specific information from the foreign supplier regarding

each component. This information should include each component's weight, value, volume, area and function within the complete product. In order to enable CBP to verify the importer's determination of the product's essential character, it would be helpful if the importer presents the information regarding each component as well as a sample or photograph of the item.

A binding ruling regarding the classification of a product may be requested prior to importation. See Part 177 of the Customs Regulations (19 CFR 177). A ruling request should include a sample of the item as well as information on its use and precise composition. Each material that comprises the product should be identified. For mixtures, sets, or composite goods, a breakdown indicating the bulk, quantity, weight, value and role of each component should be submitted with the ruling request.

WHAT RECORDS MUST BE KEPT?

The Tariff Act requires any owner, importer, consignee, importer of record, entry filer or other party who imports merchandise into the U.S. to make, keep and render for examination or inspection, records which pertain to the importation of the merchandise and are normally kept in the ordinary course of business, for a period of time not to exceed five years from the date of entry. The term "records" includes electronic data. These records would include purchase orders, payment information, shipping records, ledgers, research and development records, *etc.* In addition, certain records required for entry of merchandise must be produced upon demand by CBP. Failure to produce required entry records could lead to delays in release of your merchandise and/or to the imposition of penalties.

INVOICING REQUIREMENTS

In accordance with section 141.86 of the Customs Regulations (19 CFR 141.86), invoices should describe the precise nature and use of the merchandise. Each component material of the article should be identified. If possible the invoice should provide a complete breakdown by weight and a complete breakdown by value. These breakdowns would give us information indicating the percentage of the article (by weight and by value) which is represented by each component.

The style name and brand name of the article is important and it would be helpful if this information appears on the invoice along with the marks, numbers and symbols which represent this merchandise. In addition, an invoice should provide information on the unit value, the total value of the shipment, quantity and terms of sale. When a product is a set, the invoice should not simply indicate the value of the entire set but should identify each article within the set and provide the unit value for each of these items. Please see "*What Every Member of the Trade Community Should Know About: Customs Value*" for information on determining value for Customs purposes. This publication is available on the Customs Electronic Bulletin Board and the CBP Internet Web site, both of which are described below.
8-734-3247).

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, on June 20, 2001, CBP launched the "Know Before You Go" publication and traveler awareness campaign designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

Customs Regulations

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound, 2003 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Regulations as of April 1, 2003, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the *Customs Bulletin*. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The February 2002 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The February 2002 edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from U.S. Customs and Border Protection, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT OR 1-800-NO-DROGA



Visit our Internet web site: <http://www.cbp.gov>