

U.S. Customs Service

General Notices

STANDARDS FOR TARIFF CLASSIFICATION OF UNISEX FOOTWEAR

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: General notice; solicitation of comments.

SUMMARY: This document invites the public to submit comments to Customs regarding what standards Customs should use in determining what constitutes "unisex" footwear for tariff classification purposes. Comments are invited on the appropriateness of specific standards suggested by a footwear trade association and on the extent to which any standards that Customs has followed in the past should be retained, and suggestions for appropriate alternative standards are also invited. After a review of the submitted comments, Customs will attempt to formulate specific proposed standards for further public comment prior to adoption of a final interpretive rule in this area.

DATE: Comments must be submitted by June 14, 2002.

ADDRESSES: Written comments may be addressed to, and inspected at, the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229.

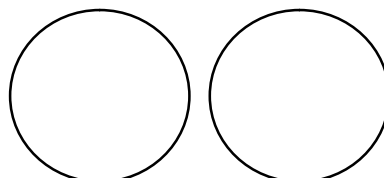
FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Textile Branch, Office of Regulations and Rulings (202-927-2380).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Chapter 64 of the Harmonized Tariff Schedule of the United States (HTSUS) covers articles of footwear and footwear uppers and other parts of footwear. Within Chapter 64, heading 6403 covers "[f]ootwear with outer soles of rubber, plastics, leather or composition leather and uppers of leather." Under heading 6403, subheading 6403.99.60, specifically covers "other" footwear "[f]or men, youths and boys" and the two following subheadings (6403.99.75 and 6403.99.90) cover "other" footwear "[f]or other persons." Additional U.S. Note 1(b) to Chapter 64, HTSUS, provides as follows:

(b) The term "*footwear for men, youths and boys*" covers footwear of American youths' size 11½ and larger for males, and does not include footwear commonly worn by both sexes.



Nearly all types of footwear may be, and in fact are, worn by both sexes. Moreover, many types of shoes in male sizes feature no physical characteristics which distinguish the footwear as being exclusively for males. While Customs is often required to determine whether footwear in sizes for males is “commonly worn by both sexes” within the meaning of Additional U.S. Note 1(b) to Chapter 64, HTSUS, and thus is excluded from classification as “for men, youths and boys” under subheading 6403.99.60, HTSUS (and consequently must be classified as “for other persons” under subheading 6403.99.75 or subheading 6403.99.90, HTSUS), the standards for making that determination have been developed and applied by Customs on an *ad hoc*, case-by-case, basis. This approach to the “unisex” footwear issue, while effective in individual cases, has provided only limited guidance to the importing community and to Customs officers as regards other prospective or current import transactions that present different factual patterns involving that issue.

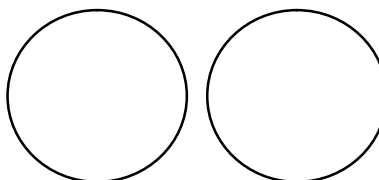
In a letter dated September 17, 1999, a request was made on behalf of the Footwear Distributors and Retailers of America (FDRA) that Customs Headquarters issue a policy memorandum or other decision to clarify the unisex footwear issue. The letter requested that Customs (1) set forth criteria for determining whether footwear claimed to be “for men, youths and boys” is “commonly worn by both sexes” and therefore should be classified as footwear “for other persons” and (2) ensure the uniform interpretation and application of those criteria by Customs field offices. To this end, the letter requested the adoption of a unisex footwear policy consisting of five specified elements.

In light of the request on behalf of the FDRA, and based on a review of the various criteria Customs has applied in this area as reflected in prior rulings and other written decisions, Customs believes that the complexity of this matter warrants preliminary public comment procedures to assist Customs in developing, for further public comment, specific proposals for standards to be applied in resolving issues regarding the classification of unisex footwear. To assist the public in preparing comments on this matter, the specific FDRA proposals and the standards Customs currently applies in this area are described below.

The FDRA Proposed Criteria

The elements of the unisex footwear policy proposed by the FDRA consisted of the following:

1. Footwear in sizes for men, youths and boys should not be considered “commonly worn by both sexes,” that is, “unisex,” if that particular type of footwear (for example, tennis shoes) is available in women’s styles;
2. Determinations as to whether a type of shoe is “commonly worn by both sexes” should be based upon use by women or girls of at least 25 percent, a ratio of at least one female user to every four male users;
3. Footwear for males should be presumed not to be unisex if an importer markets a “comparable” number of styles for both sexes, and a



ratio of five to one (male to female styles) should be considered “comparable;”

4. In determining whether women’s styles are available, the inquiry should focus on the availability of women’s styles in the market as a whole; and

5. The fact that a shoe is not marketed to women should be considered evidence that it is not “commonly worn by both sexes.”

The Current Customs Standards

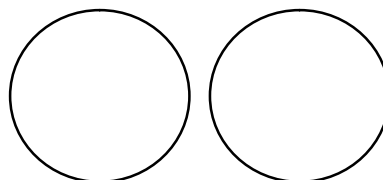
In determining whether footwear is “commonly worn by both sexes,” Customs generally considers certain types or categories of footwear to be at least susceptible to unisex treatment (that is, to be classifiable as footwear “for other persons” despite claims that the footwear is designed and intended solely “for men, youths and boys”). These types of footwear include hikers, sandals, work boots, cowboy boots, combat boots, motorcycle boots, “athleisure” shoes, boat shoes, and various types within the class described as athletic footwear (for example, tennis shoes, training shoes).

Customs generally considers that a type of footwear is “commonly worn by both sexes” if the number of styles claimed to be for males in an importer’s line, when compared to the number of styles in the line for females, renders it likely that females will purchase and wear at least 5 percent of the styles claimed to be for males (in other words, one female user for every twenty male users). Since it is unlikely that a distributor or retailer would discourage the sale to females of footwear claimed to be for males, Customs would consider that an importer of basketball shoes claimed to be for use only by males, who imports no basketball shoes claimed to be for use only by females, is in fact an importer of basketball shoes that potentially could be “commonly worn by both sexes.”

Once it is determined that an imported line of footwear potentially susceptible to unisex treatment is in fact “commonly worn by both sexes,” Customs applies unisex treatment to that footwear line only in sizes up to and including American men’s size 8. This size-limited treatment isolates from the full range of imported sizes those footwear sizes that are most “commonly worn by both sexes.”

Even if a shoe in an imported line claimed to be for males is of a type of footwear commonly worn by both sexes (for example, a hiker, sandal, work boot, tennis shoe), Customs does not accord unisex treatment to the imported line if a “comparable line” of styles is available to females. The styles of the “comparable line,” however, should be substantially similar to the styles for males in general appearance, value, marketing, activity for which designed, and component material (including percentage) breakdowns.

With regard to a ratio of male styles to female styles at which a “comparable line” may be found to exist, in Headquarters Ruling Letter (HQ) 955960, issued August 19, 1994, Customs stated that “* * * a good case * * * exists [for that finding] in the situation where an equal number of styles of a particular type of footwear * * * for men and women is avail-



able.” In other words, a one to one ratio clearly establishes a “good case” by which an importer may avoid unisex treatment of footwear claimed to be for males.

For purposes of establishing the existence of a “comparable line” for females, Customs confines its determination to the imported footwear at issue. Customs may take notice of additional styles made available by the importer that are not included in a particular entry. Customs does not, however, consider the availability of comparable styles for females in the U.S. market as a whole in determining what constitutes an importer’s “comparable line.”

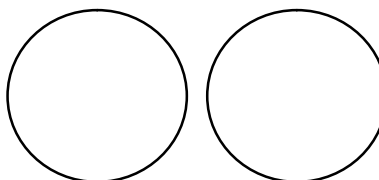
Finally, Customs does not consider the fact that a certain shoe is not marketed to women to be evidence that the shoe is not “commonly worn by both sexes.” Customs has no control over decisions regarding the marketing of imported footwear, and it is further noted that sales to females of footwear claimed to be for males, without the expense of marketing, would certainly appear to be profitable and therefore probably do occur.

Submission of Comments

Customs is interested in receiving preliminary comments from the public on all aspects of the unisex footwear issue for the purpose of assisting Customs in the preparation of specific proposals for further public comment, with a view to promulgating, if feasible, a final interpretive rule setting forth standards for the tariff classification of unisex footwear. Comments are specifically invited on, but need not be limited to, the following matters:

1. Whether specific, mandatory criteria, as opposed to general guidelines, should be used by Customs in resolving unisex footwear classification issues;
2. The acceptability of the five FDRA proposals both individually and as a group;
3. The extent to which any of the positions of Customs described above should be retained, revised or discarded;
4. Whether any general standards or specific criteria other than those already mentioned in this document should be adopted;
5. Whether the terms “category,” “type,” “style,” and “line” (or “imported line”) should be specifically defined with reference to footwear for purposes of their use in developing unisex footwear classification standards; and
6. Whether application of unisex footwear classification standards should be limited to the subheadings under heading 6403, HTSUS, mentioned above or should also apply for purposes of classification under other HTSUS headings (for example, under heading 6402, for purposes of distinguishing at the statistical subheading level between footwear “for men” and footwear “for women” and “other” footwear.

Consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C.



U.S. CUSTOMS SERVICE

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552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, DC.

Dated: April 9, 2002.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Published in the Federal Register, April 15, 2002 (67 FR 18303)]



NOTICE OF REVOCATION OF CUSTOMS BROKER LICENSE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

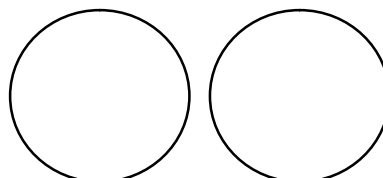
SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 USC 1641) and the Customs Regulations [19 CFR 111.45(a)], the following Customs broker license is revoked by operation of law.

<i>Name</i>	<i>License</i>	<i>Port</i>
Sprint Custom House Brokerage, Inc.	17315	New York

Dated: April 1, 2002.

BONNI G. TISCHLER,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, April 9, 2002 (67 FR 17117)]



DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, April 10, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

DOUGLAS M. BROWNING,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

MODIFICATION/REVOCAION OF RULING LETTERS AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
TRAVEL BAGS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification and revocation of rulings and treatment relating to the tariff classification of travel bags.

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 is modifying 1 ruling and revoking one ruling, each pertaining to the tariff classification of travel bags, and to revoke any treatment previously accorded by Customs to substantially identical merchandise. Notice of the proposed modification and revocation was published in the CUSTOMS BULLETIN of March 6, 2002, Vol. 36, No. 10. No comments were received in response to the notice of proposed action.

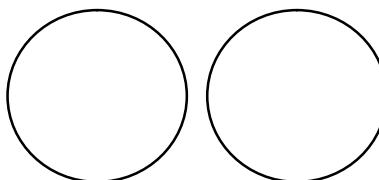
EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after June 24, 2002.

FOR FURTHER INFORMATION CONTACT: Greg Deutsch, Textiles Branch (202) 927-2302.

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 "in-



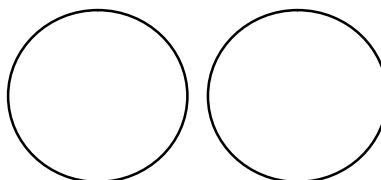
formed compliance” and “shared responsibility.” These concepts are premised on the idea that, in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs 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 Customs 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 Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to modify Port Ruling Letter (PD) D85274, dated December 10, 1998, and to revoke PD D83382, dated November 20, 1998, was published on March 6, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 10. No comments were received in response to the notice of proposed action.

As was stated in the notice of proposed modification and revocation, the notice covered any rulings relating to the specific issues of tariff classification set forth in the rulings, which may have existed but which had not been specifically identified. Any party who had 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 Customs during the comment period.

In PD D85274, one of the three bags at issue, identified by style number 75187 and by the name “Garden Party,” was classified as a handbag in subheading 4202.22.8050, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), textile category 670. In PD D83382, a 100 percent wool woven tote bag was classified in subheading 4202.92.2000, HTSUSA, which in pertinent part, provides for travel bags with outer surface of vegetable fibers. It is Customs position that the “Garden Party” bag of PD D85274 is not a handbag, but is similar to travel bags known as “tote” bags, and should be classified in subheading 4202.92.3031, HTSUSA, textile category 670. It is also Customs position that, since wool is not composed of vegetable fibers, the wool tote bag subject to PD D83382 should be classified in subheading 4202.92.3091, HTSUSA, textile category 870, which provides, in pertinent part, for travel bags with outer surface of textile materials other than vegetable fibers.

Pursuant to 19 U.S.C. § 1625(c)(1), Customs is modifying PD D85274, and revoking PD D83382, and any other rulings not specifically identified which involve identical or substantially identical merchandise, to reflect the proper classification of the articles according to the analyses in Proposed Headquarters Ruling Letters (HQ) 963573 and HQ 963610, which are set forth as Attachments A and B, respectively, to this docu-



ment. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), Customs is revoking any treatment that Customs may have previously accorded to substantially identical transactions that is contrary to the position set forth in this notice.

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

Dated: April 8, 2002.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 8, 2002.
CLA-2 RR:CR:TE 963573 GGD
Category: Classification
Tariff No. 4202.92.3031

MR. MICHAEL R. SPANO
MICHAEL R. SPANO & COMPANY
190 McKee Street
Floral Park, NY 11001

Re: Modification of PD D85274; "Garden Party" Bag; "Tote" Bag similar to Travel, Sports and Similar Bags; Not Handbag.

DEAR MR. SPANO:

In Port Ruling Letter (PD) D85274, issued to you on December 10, 1998, one of the three bags classified therein, identified as "Garden Party" and by style number 75187, was classified in subheading 4202.22.8050, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), textile category 670, which in pertinent part, provides for "*** Handbags, whether or not with shoulder strap, including those without handle: With outer surface of sheeting of plastic or of textile materials: With outer surface of textile materials: Other: Other: Other, Of man-made fibers." We have reviewed PD D85274 and have found the ruling to be in error. Therefore, this ruling modifies PD D85274.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of PD D85274 was published on March 6, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 10.

Facts:

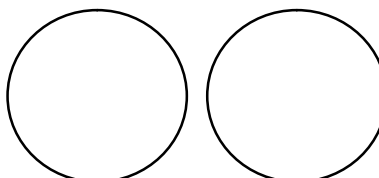
The sample bag classified in PD D85274 had an outer surface composed of 100 percent polyester textile material. The bag measured approximately 15 inches by 10½ inches by 4 inches, had one zippered central compartment, one zippered pocket sewn into the lining, and two carrying handles that were composed of the same material as the outer surface.

Issue:

Whether the "Garden Party" bag is properly classified as a handbag in subheading 4202.22.8050, HTSUSA, or as a "tote," similar to a travel bag in subheading 4202.92.3031, 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 ac-



ording 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 articles, heading 4202, HTSUSA, covers traveling bags, toiletry bags, handbags, and similar containers. Subheading 4202.92, HTSUSA, provides in part for travel, sports and similar bags. Additional U.S. Note 1 to chapter 42, HTSUSA, states:

For the purposes of heading 4202, the expression “*travel, sports and similar bags*” means goods, other than those falling in subheadings 4202.11 through 4202.39, of a kind designed for carrying clothing and other personal effects during travel, including backpacks and shopping bags of this heading. * * *

Subheadings 4202.21 through 4202.29, HTSUSA, provide for handbags. The word “handbag” is defined in Webster’s New World Dictionary, Second College Edition, 1972, as: “1. a small container for money, toilet articles, keys, etc., carried by women; purse 2. a small suitcase or valise.”

In Headquarters Ruling Letter (HQ) 957917, issued July 7, 1995, this office reconsidered and reclassified in subheading 4202.92.1500, HTSUSA, a woven cotton bag which measured approximately 14 inches by 10 inches by 5 inches. The bag had a reinforced open top with double carrying straps, one central compartment, no lining, and no additional pockets or compartments. We stated that tote bags similar to those described immediately above were no longer classifiable as handbags, and that such bags were to be regarded as multipurpose bags for carrying various personal effects.

In HQ 962364, dated December 8, 1998, we classified three separate bags with outer surfaces of cotton and textile carrying handles. Each bag measured approximately 9 inches in height by 11½ inches in width, and had gussets allowing expansion to approximately 3 inches in depth. Two of the bags had one zippered central compartment, no lining, and no additional pockets, and one of the bags had an open top, central compartment and a flat pocket attached to its interior lining. We found that none of the bags was designed or intended to be used as a container for items normally carried in a woman’s handbag, and that all three styles were multipurpose bags for carrying various personal effects other than, or in addition to, those normally carried in a woman’s handbag. The bags were classified as travel bags in subheading 4202.92.1500, HTSUSA.

In this case, the dimensions and features of the bag identified as style 75187 indicate that the bag is a multipurpose “tote” for carrying various personal effects other than, or in addition to, those normally carried in a woman’s handbag. The bag is classified in subheading 4202.92.3031, HTSUSA.

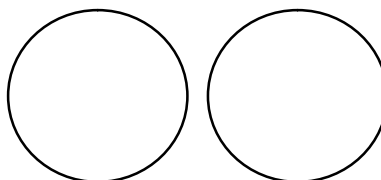
Holding:

PD D85274, dated December 10, 1998, is hereby modified.

The bag identified by style no. 75187 and as “Garden Party,” is classified in subheading 4202.92.3031, HTSUSA, textile category 670, the provision for “Trunks * * * : Other: With outer surface of sheeting of plastic or of textile materials: Travel, sports and similar bags: With outer surface of textile materials: Other: Other: Of man-made fibers: Other.” The general column one duty rate is 18.1 percent ad valorem. There are no applicable quota/visa requirements for the products of World Trade Organization (“WTO”) members. The textile category number above applies to merchandise produced in non-WTO countries.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office. The *Status Report On Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.



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

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 8, 2002.
CLA-2 RR:CR:TE 963610 GGD
Category: Classification
Tariff No. 4202.92.3091

MR. CLAY SMITH
*1726 Edgewater Drive
Edgewater, FL 32132*

Re: Revocation of PD D83382; Tote Bag of Woven Wool.

DEAR MR. SMITH:

In Port Ruling Letter (PD) D83382, issued to you November 20, 1998, a woven wool tote bag was classified in subheading 4202.92.2000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which in pertinent part, provides for “* * * Travel, sports and similar bags: With outer surface of textile materials: Of vegetable fibers and not of pile or tufted construction: Other.” We have reviewed PD D83382 and have found the ruling to be in error. Therefore, this ruling revokes PD D83382.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of PD D83382 was published on March 6, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 10.

Facts:

The sample bag which was the subject of PD D83382 was described as an open top, 100 percent wool woven tote bag which measured 13 inches in length by 10½ inches in height, and which had a shoulder strap 27 inches in length.

Issue:

Whether the bag is properly classified in a provision for travel bags with outer surface of textile materials composed of vegetable fibers.

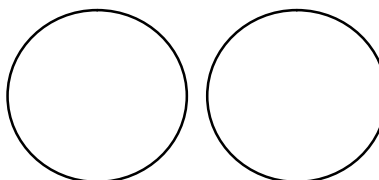
Law and Analysis:

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.

The provision in which the tote bag at issue was classified—subheading 4202.92.2000, HTSUSA—provides for bags with an outer surface of textile materials that are composed of vegetable fibers. The subject bag, however, is composed of 100 percent woven wool. Although woven wool is a textile material, wool is composed of animal fibers, not vegetable fibers. The bag is therefore classified in subheading 4202.92.3091, HTSUSA, which provides for travel bags with outer surface of textile materials that are other than vegetable fibers, paper yarn, silk, or man-made fibers.

Holding:

PD D83382, issued November 20, 1998, is hereby revoked.



The tote bag composed of woven wool is classified in subheading 4202.92.3091, HTSUSA, textile category 870, which in pertinent part, provides for “* * *Travel, sports and similar bags: With outer surface of textile materials: Other, Other: Other.” The general column one duty rate is 18.1 percent ad valorem. There are no applicable quota/visa requirements for the products of World Trade Organization (“WTO”) members. The textile category number above applies to merchandise produced in non-WTO countries.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office. The *Status Report On Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

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

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

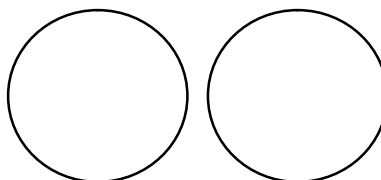
**PROPOSED MODIFICATION AND REVOCATION OF RULING
LETTERS AND REVOCATION OF TREATMENT RELATING TO
TARIFF CLASSIFICATION OF INVESTMENT GOLD BARS**

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification and revocation of ruling letters, and revocation of treatment relating to tariff classification of investment gold bars.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify one ruling and revoke another ruling relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of investment gold bars, and to revoke any treatment Customs has previously accorded to substantially identical transactions. These articles are identified as gold investment bars in rectangular shapes. They are stamped on one side with weight (between 1 gram to 10 troy ounces), purity of the gold (999.9 or 99.99%), and a hallmark with the name of the producer (PAMP) and country of origin (Suisse). On the other side is a stamped likeness of the Goddess Furtuna. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before May 24, 2002.



ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927-0760.

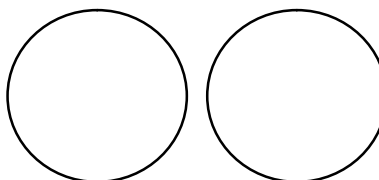
SUPPLEMENTARY INFORMATION:

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 Customs 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 Customs 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 Customs 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 Customs intends to modify one ruling and revoke another ruling relating to the tariff classification of investment gold bars. Although in this notice Customs is specifically referring to two rulings, NY D89806 and NY G88058, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. 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 Customs 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, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Cus-



toms personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs 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 this notice.

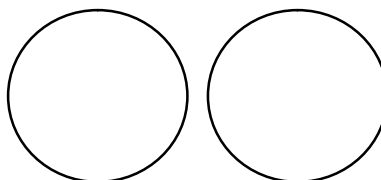
In NY D89806, dated March 31, 1999, minted gold bullion bars, marked with information designed to authenticate the gold content, to include the likeness of Fortuna, were held to be classifiable as gold, unwrought or in semimanufactured forms, in subheading 7108.13.55, HTSUS. This ruling was based on the belief that the merchandise conformed to the tariff description in that subheading. NY D89806 is set forth as "Attachment A" to this document. NY G88058, dated March 12, 2001, in part concerned investment gold bars in rectangular shapes, stamped as indicated with hallmark and assay information, and stamped with a likeness of Fortuna, were held to be classifiable as articles of goldsmiths' or silversmiths' wares, in subheading 7114.19.00, HTSUS. NY G88058 is set forth as "Attachment B" to this document.

It is now Customs position that these gold bars are classifiable as articles of precious metal or of metal clad with precious metal, in subheading 7115.90.05, HTSUS. Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY D89806 and to modify NY G88058, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in HQ 965535 and HQ 965187, which are set forth as "Attachment C" and "Attachment D" to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs 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: April 10, 2002.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]



14 CUSTOMS BULLETIN AND DECISIONS, VOL. 36, NO. 17, APRIL 24, 2002

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, March 31, 1999.
CLA-2-71:RR:NC:115 D89806
Category: Classification
Tariff No. 7108.13.5500

MR. RICHARD H. ABBEY
ABLONDI, FOSTER, SOBIN & DAVIDOW
1150 Eighteenth Street, N.W.
Washington, DC 20036-4129

Re: The tariff classification of Minted Gold Bars from Switzerland.

DEAR MR. ABBEY:

In your letter dated March 22, 1999 you requested a tariff classification ruling on behalf of your client A-Mark Precious Metals, Inc.

The subject merchandise is minted gold bullion bars, in weights ranging from one gram to one ounce. The bars are rectangular in shape. On one side the bar is marked with the purity of the gold (999.9%), the weight of the bar (One Troy Ounce), the name of the producer (PAMP) and the country of origin (Suisse). On the other side, the bar is marked with PAMP'S Fortuna trademark. The Fortuna trademark is recorded with the Patent and Trademark Office.

The applicable subheading for the Minted Gold Bars will be 7108.13.5500, Harmonized Tariff Schedule of the United States (HTS), which provides for Gold (including gold plated with platinum) unwrought or in semimanufactured forms, or in powder form: Other: Rectangular or near rectangular shapes, containing 99.5 percent or more by weight of gold and not otherwise marked or decorated than with weight, purity, and or other identifying information. The rate of duty will be free.

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 Melvyn Birnbaum at 212-637-7017.

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

[ATTACHMENT B]

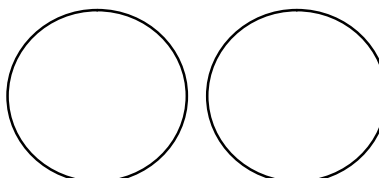
DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, March 12, 2001.
CLA-2-71:RR:NC:N1:113 G88058
Category: Classification
Tariff No. 7114.19.0000

MS. MARIAN CLARE
UTC OVERSEAS, INC.
55 Inip Drive
Inwood, NY 11096

Re: The tariff classification of gold investment bars from Switzerland.

DEAR MS. CLARE:

In your letter dated March 1, 2001, you requested a ruling on behalf of Manfra, Tordella & Brooks, Inc. on tariff classification.



U.S. CUSTOMS SERVICE

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The merchandise consists of investment bars of 24-karat gold. They are available in rectangular or oval shape in weights ranging from 1 gram to 10 troy ounces. The bars are stamped with a design of the Statue of Liberty or of Fortuna, as well as the hallmark and assay information.

The applicable subheading for this product will be 7114.19.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of goldsmiths' or silver-smiths' wares and parts thereof, of precious metal or of metal clad with precious metal * * * of other precious metal, whether or not plated or clad with precious metal. The rate of duty will be 7.9 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 James Smyth at 212-637-7008.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965535 JAS
Category: Classification
Tariff No. 7115.90.05

RICHARD H. ABBEY, ESQ.
MILLER & CHEVALIER
655 Fifteenth Street, N.W., Suite 900
Washington, DC 20005

Re: NY D89806 Revoked; Minted Gold Bars.

DEAR MR. ABBEY:

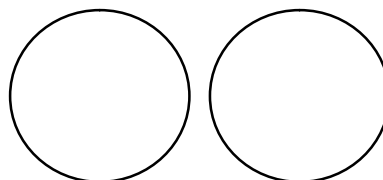
In NY D89806, which the Director of Customs National Commodity Specialist Division, New York, issued to you on March 31, 1999, on behalf of A-Mark Precious Metals, Inc., merchandise described as minted gold bullion bars was held to be classifiable as other semimanufactured forms of gold, in subheading 7108.13.55, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered the classification of these bars and now believe that it is incorrect.

Facts:

The merchandise in NY D89806 is gold bars, generally rectangular in shape with rounded corners. They are marked on one side with the purity of the gold (99.99%), the weight of the bar ranging from 1 gram to 10 troy ounces, and a hallmark depicting the manufacturer (PAMP) and the country of manufacture (Suisse). The other side is marked with PAMP's Fortuna trademark which is said to be recorded with the [U.S.] Patent and Trademark Office. Gold bars of this type are not cast; rather, they are struck, that is, generally stamped from bars rolled to strip form.

The HTSUS provisions under consideration are as follows:

7108	Gold (including gold plated with platinum) unwrought or in semimanufactured forms * * *.
7108.13	Other semimanufactured forms:
7108.13.55	Rectangular or near rectangular shapes, containing 99.5 percent or more by weight of gold and not otherwise marked or decorated than with weight, purity, or other identifying information



*	*	*	*	*	*	*
7115.90	Other:					
7115.90.05	Articles of precious metal, in rectangular or near rectangular shapes, containing 99.5 percent or more by weight of a precious metal and not otherwise marked or decorated than with weight, purity or other identifying information					

Issue:

Whether the minted gold bars are articles of heading 7108 or heading 7115.

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.

As to classification under heading 7108, HTSUS, as gold in semimanufactured forms, Additional U.S. Note 1(b), HTSUS, states the term “*semimanufactured*” refers to wrought metal products in the form of bars, rods, sections, plates, sheets, strips, wire, tubes, pipes and hollows bars, and to powder (other than primary metals in powder form). In the main, the articles in Note 1(b) are made from the various primary forms of metal regarded as “unwrought” and delineated in Additional U.S. Note 1(a), HTSUS. However, as the term implies, these “semimanufactured” forms, while discrete articles of commerce in themselves, are intended for further manufacture into other articles. The gold bars at issue are generally stamped from bars rolled to strip form. They are not bars of the type identified in Note 1(b), but are further processed by die stamping on them the indicia of authenticity discussed previously. These bars are processed beyond semimanufactured forms into “articles” of gold. NY G88058, dated March 12, 2001, in part classified substantially similar rectangular-shaped gold bars in subheading 7114.19.00, HTSUS, as articles of goldsmiths’ and silversmiths’ wares. This ruling is incorrect concerning these bars and we intend to modify it.

Holding:

Under the authority of GRI 1, the minted gold bullion bars, as described, are provided for in heading 7115. They are classifiable in subheading 7115.90.05, HTSUS. NY D89806, dated March 31, 1999, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

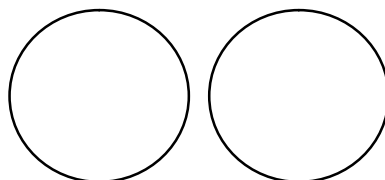
CLA-2 RR:CR:GC 965187 JAS
Category: Classification
Tariff No. 7115.90.05

RICHARD L. FURMAN, ESQ.
DE ORCHIS, WALKER & CORSA, LLP
61 Broadway, 26th Floor
New York, NY 10006-2802

Re: NY G88058 Modified; Gold Investment Bars.

DEAR MR. FURMAN:

In your letter, dated July 19, 2001, on behalf of Manfra, Tordella & Brookes, Inc., you request a review of NY G88058, dated March 12, 2001, which classified certain gold investment bars, among other gold bars, as articles of goldsmiths’ or silversmiths’ wares, of pre-



cious metal, in subheading 7114.19.00, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered the classification of these bars and now believe that it is incorrect. We regret the delay in responding.

Facts:

The merchandise in NY G88058, about which you inquire, is described as PAMP Fortuna investment gold bars (the "PAMP bars"). The ruling included gold bars in various shapes with different designs, but only the rectangular-shaped PAMP Fortuna gold bars are at issue here. A single page from a brochure on the merchandise which you submitted, depicts gold articles, generally rectangular in shape, with rounded corners and a raised edge. One side is stamped with the purity of the gold (99.99%), the weight of the bar ranging from 1 gram to 10 troy ounces, and a hallmark depicting the manufacturer (PAMP) and the country of manufacture (Suisse). A decorative profile of the Goddess Fortuna is stamped on the other side. The file reflects this to be a registered PAMP trademark. The brochure page depicts a bar in a clear plastic display folder with assay information at the bottom. Gold bars of this type are not cast; rather, they are struck, that is, generally stamped from bars rolled to strip form.

You maintain that these bars do not appear to be of the class or kind of articles regarded as goldsmiths' or silversmiths' wares. More importantly, you cite NY D89806, dated March 31, 1999, which classified what appear to be substantially similar articles in subheading 7108.13.55, HTSUS, as other gold, unwrought or in semimanufactured forms. Alternatively, you maintain that the provision for other articles of precious metal, in rectangular or near rectangular shapes, in subheading 7115.90.05, HTSUS, represents the correct classification.

The HTSUS provisions under consideration are as follows:

7108	Gold (including gold plated with platinum) unwrought or in semimanufactured forms * * *.
7108.13	Other semimanufactured forms:
7108.13.55	Rectangular or near rectangular shapes, containing 99.5 percent or more by weight of gold and not otherwise marked or decorated than with weight, purity, or other identifying information
*	*
*	*
*	*
*	*
*	*
*	*
7114	Articles of goldsmiths' or silversmiths' wares * * * of precious metal or of metal clad with precious metal:
7114.19.00	Of other precious metal whether or not plated or clad with precious metal
*	*
*	*
*	*
*	*
7115	Other articles of precious metal or of metal with precious metal:
7115.90	Other:
7115.90.05	Articles of precious metal, in rectangular or near rectangular shapes, containing 99.5 percent or more by weight of a precious metal and not otherwise marked or decorated than with weight, purity or other identifying information

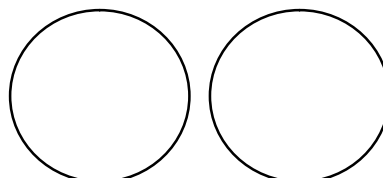
Issue:

Whether the PAMP Fortuna investment gold bars are articles of heading 7114 or heading 7115.

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.

Chapter 71, Note 10, HTSUS, states that for the purposes of heading 7114, the expression "articles of goldsmiths' or silversmiths' wares" includes such articles as ornaments, table ware, toilet-ware, smokers' articles and other articles of household, office or religious use. Clearly, one would be unlikely to purchase the PAMP investment gold bars at issue here solely for display purposes but, as the description implies, for purposes of investment, or to be melted down and reformed into jewelry or other gold articles. The identifying information stamped on the bars authenticates the gold content. These bars bear no demonstrated similarity to the goods of heading 7114 described in Chapter 71, Note 10.



As to classification under heading 7108, HTSUS, as gold in semimanufactured forms, Additional U.S. Note 1(b), HTSUS, states the term “*semimanufactured*” refers to wrought metal products in the form of bars, rods, sections, plates, sheets, strips, wire, tubes, pipes and hollows bars, and to powder (other than primary metals in powder form). In the main, the articles in Note 1(b) are made from the various primary forms of metal regarded as “unwrought” and delineated in Additional U.S. Note 1(a), HTSUS. However, as the term implies, these “semimanufactured” forms, while discrete articles of commerce in themselves, are intended for further manufacture into other articles. The gold bars at issue are generally stamped from bars rolled to strip form. But, they are not bars of the type identified in Note 1(b), but are further processed by die stamping on them the indicia of authenticity discussed previously. These bars are processed beyond semimanufactured forms into “articles” of gold. NY D89806, dated March 31, 1999, which classified substantially similar gold bars in subheading 7108.13.55, HTSUS, is incorrect and we intend to revoke it.

Holding:

Under the authority of GRI 1 the PAMP Fortuna investment gold bars in rectangular shapes are provided for in heading 7115. They are classifiable in subheading 7115.90.05, HTSUS. NY G88058, dated March 12, 2001, is modified as to these bars.

JOHN DURANT,
Director,
Commercial Rulings Division.

