U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, October 2, 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.

MICHAEL T. SCHMITZ,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF LED DISPLAY MODULES

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

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of LED display modules.

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 revoke a ruling letter pertaining to the tariff classification of certain LED display modules under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before November 15, 2002.

ADDRESS: Written comments (preferably in triplicate) 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. Comments submitted may be inspected at the U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 572–8780.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on 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 section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the classification of certain LED display modules. Although in this notice Customs is specifically referring to one ruling, NY I82314, 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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), 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, Customs personnel applying a ruling of a third party to importations of the same or simi-

lar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. 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 its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY I82314 dated June 19, 2002, set forth as Attachment A to this document, Customs classified certain LED display modules in subheading 8531.90.90, HTSUS, as: "Electric sound or visual signalling apparatus * * * other than those of heading 8512 or 8530; parts thereof: * * * Parts: * * * Other: * * * Other."

It is now Customs position that the LED display modules are classified in subheading 8530.90.00, HTSUS, as: "Electrical signalling, safety or traffic control equipment for railways, streetcar lines, subways, roads * * *; parts thereof: * * * Parts." Proposed HQ 965802 revoking NY I82314 is set forth as Attachment B.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY I82314 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 965802. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: September 30, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 19, 2002.

CLA–2–85:RR:NC:1:112 I82314
Category: Classification
Tariff No. 8531.90.9000

MR. LAYNE MOSTAD
CAPTUS INTERNATIONAL, INC.
112 Eighth Street W.
Brookings, SD 57006–1143

Re: The tariff classification of LED modules from China.

DEAR MR. MOSTAD:

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

As indicated by the submitted descriptive literature, the LED modules consist of a circuit board populated with electronic components and light emitting diodes (LED's). These modules are designed to be incorporated into electronic displays that are used for traffic management on highways and other roads. The displays provide information on traffic conditions.

The applicable subheading for the LED modules will be 8531.90.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for parts of electric sound or visual signaling apparatus: Other: Other. The rate of duty will be 1.3 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 646–733–3017.

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

[ATTACHMENT B]

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

CLA–2 RR:CR:GC 965802 GOB
Category: Classification
Tariff No. 8530.90.00

LAYNE R. MOSTAD
PRESIDENT
CAPTUS INTERNATIONAL
112 Eighth Street W.
Brookings, SD 57006–1143

Re: Revocation of I82314; LED Display Modules.

DEAR MR. MOSTAD:

This is in reply to your letter of August 6, 2002, in which you request that we reconsider NY I82314 dated June 19, 2002, issued to you by the Director, National Commodity Specialist Division, with respect to the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of certain LED (light emitting diode) display modules.

Facts:

The LED display modules were described in I82314 as follows:

> * * * the LED modules consist of a circuit board populated with electronic components and light emitting diodes (LED's). These modules are designed to be incorpo-

rated into electronic displays that are used for traffic management on highways and other roads. The displays provide information on traffic conditions.

In your letter of August 6, 2002, you state: "* * * the 'LED module' is a component (part) of the referenced traffic control signs * * * Our modules will be strictly used for the fabrication of electric signs used to control roadway traffic."

In your letter of May 13, 2002 to Customs, you state: "The LED modules will be incorporated into both permanently-mounted and mobile (portable) electronic displays that are used for vehicular traffic management (highways, freeways, etc.) * * * Please note that we only intend to import the LED characters, which form the programmable text portion of the display. The balance of the displays (cabinet, trailer, solar panels, and power supply) are either manufactured within the US or provided to our customers by other suppliers."

In response to our request for additional information, in your letter of September 26, 2002, you state:

> The LED display boards to be imported by Captus International are to be used solely for the manufacture of road traffic control displays. Some of these displays are to be mobile, in which LED boards are mounted on trailers placed at roadside; such trailers are moved from one road construction site to another as needed. Other traffic control displays are permanently mounted on frames at roadside and may stay in place for 10 years or more. At this time, Captus International plans to sell its LED boards to ADDCO, Inc., of St. Paul, Minnesota. ADDCO manufactures complete traffic control display assemblies.
>
> ADDCO sells its traffic control products to state departments of transportation (DOT's) and to contractors that build roads for DOT's. In all cases, the displays are used strictly for control of vehicular roadway traffic.
>
> There are many types of LED displays produced in the U.S.—not by ADDCO, but by other companies. Such displays include full color LED video screens for sports facilities and multi-color or one-color displays for commercial applications like shopping malls, banks, and casinos. It is theoretically possible to install our LED boards in one of the non-traffic control displays mentioned above. However, differences in the LED required for various applications prevent such activity from being practical.
>
> LED's in our traffic control boards have very narrow 15- to 45-degree viewing angles that are used specifically to manage narrow roadway corridors; narrow cones of light save energy and minimize display cost, and they are all that is needed to deliver important messages to the motoring public. 15- to 45-degree angles are too narrow to use for the video screen or commercial sign applications mentioned herein; these most commonly employ viewing angles of 70 degrees and higher.

In I82314 Customs classified the LED display modules in subheading 8531.90.90, HTSUS, which provides for: "Electric sound or visual signalling apparatus * * *: * * * Parts: * * * Other: * * * Other."

Issue:

What is the classification under the HTSUS of the LED display modules?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). 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's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8530	Electrical signalling, safety or traffic control equipment for railways, streetcar lines, subways, roads, inland waterways, parking facilities, port installations or airfields (other than those of heading 8608); parts thereof:
8530.90.00	Parts

* * * * * * *

8531	Electric sound or visual signalling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:
8531.90	Parts:
	Other:
8531.90.90	Other

Note 2 to Section XVI, HTSUS, provides in pertinent part as follows:

Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

(a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8485, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

(b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate * * *

EN 85.30 provides in pertinent part as follows:

This heading covers all electrical equipment used for controlling the traffic on railways, hovertrain systems, roads or inland waterways * * *

* * * * * * *

(B) **Equipment for roads, inland waterways or parking facilities.** This group includes:

(1) **Automatic level crossing signals,** e.g., winking lights, bells, illuminated stop signs.

Electrical equipment for operating gates or barriers is also covered by this heading.

(2) **Traffic lights.** These usually consist of a system of coloured lights installed at cross-roads, junctions, etc. They comprise the actual light installations, control equipment and means of operating the controls. The lights may be hand-operated (lights operated by a traffic policeman or, on certain pedestrian crossings, by the pedestrian) or automatic (lights operated on a time basis, and lights operated by the passage of vehicles, either by means of photoelectric cells or by contacts placed on the road).

(3) **Electrical traffic control equipment for port installations or airfields.**

[All emphasis in original.]

EN 85.31 provides in pertinent part as follows:

With the **exception** of signalling apparatus used on cycles or motor vehicles (**heading 85.12**) and that for traffic control on roads, railways, etc. (**heading 85.30**), this heading covers all electrical apparatus used for signalling purposes, whether using sound for the transmission of the signal (bells, buzzers, hooters, etc.) or using visual indication (lamps, flaps, illuminated numbers, etc.) and whether operated by hand (e.g., door bells) or automatically (e.g., burglar alarms).

* * * * * * *

This heading includes, *inter alia*:

(A) **Electric bells, buzzers, door chimes, etc.** * * *

(B) **Electric sound signalling apparatus, horns, sirens, etc.** * * *

(C) **Other electrical signalling apparatus** * * *

(D) **Indicator panels and the like.** These are used (e.g., in offices, hotels and factories) for calling personnel, indicating where a certain person or service is required, indicating whether a room is free or not * * *

(E) **Burglar alarms** * * *

(F) **Fire alarms** * * *

(G) **Electric vapour or gas alarms** * * *

(H) **Flame alarms** * * *

[All emphasis in original.]

The LED display modules are either provided for in heading 8530, HTSUS, or in heading 8531, HTSUS. The text of heading 8531, HTSUS, contains the language: "* * * other

than those of heading * * * 8530 * * *" Thus, if the LED display modules are described in heading 8530, HTSUS, they are classified therein and not in heading 8531, HTSUS. The text of heading 8530, HTSUS, includes: "* * * traffic control equipment for * * * roads." EN 85.30 provides that heading 8530 covers all electrical equipment used for controlling equipment on roads. You describe the LED display modules as: "* * * designed to be incorporated into electronic displays that are used for traffic management on highways and other roads."

Additional U.S. Rule of Interpretation 1(a) provides that the principal use is the controlling use with respect to tariff classifications controlled by use. Heading 8530, HTSUS, is a principal use provision which includes traffic control equipment. Based upon the facts submitted, we find that the subject LED display modules are solely or principally used as parts for traffic control equipment. See note 2(b) to Section XVI, HTSUS. Accordingly, we find that the LED display modules are provided for in heading 8530, HTSUS, and are classified in subheading 8530.90.00, HTSUS, as: "Electrical signalling, safety or traffic control equipment for railways, streetcar lines, subways, roads, inland waterways, parking facilities, port installations or airfields (other than those of heading 8608); parts thereof: * * * Parts."

Holding:

The LED display modules are classified in subheading 8530.90.00, HTSUS, as: "Electrical signalling, safety or traffic control equipment for railways, streetcar lines, subways, roads, inland waterways, parking facilities, port installations or airfields (other than those of heading 8608); parts thereof: * * * Parts".

Effect on Other Rulings:

NY I82314 is revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF COTTON HEADWEAR

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

ACTION: Notice of revocation of two ruling letters and revocation of treatment relating to the tariff classification of cotton headwear.

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 is revoking two ruling letters relating to the tariff classification of cotton headwear under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise that is contrary to the position set forth in this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Textiles Branch (202) 572–8821.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility".** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on 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.

In Headquarters Ruling Letter (HQ) HQ 085174, dated September 7, 1989, Customs classified a polycotton cap crown in subheading 6505.90.8060, HTSUSA, which essentially provided for hats and other headgear, made up of textile fabric, of man-made fibers. In HQ 087327, dated July 3, 1990, Customs classified a cotton hood lined with Orlon® pile material in subheading 6505.90.2500, HTSUSA, which essentially provided for hats and other headgear, of cotton textile fabric.

Pursuant to Customs obligations, a notice of proposed modification and revocation of these ruling letters and also HQ 084912, dated July 21, 1989, was published in the CUSTOMS BULLETIN of August 28, 2002, Volume 36, Number 35. We received one comment pertaining to HQ 084912, which identified that HQ 084912 was issued to modify the classification determination of HQ 082461, dated June 15, 1989. We have reviewed this comment as well as HQ 082461 and we are declining any proposed action to modify HQ 082461.

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, Customs is revoking two ruling letters relating to the classification of cotton headwear. Although in this notice Customs is specifically referring to Headquarters Ruling Letters (HQ) 085174, dated September 7, 1989 and HQ 087327, dated July 3, 1990, this notice covers any rulings on such merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. Any

party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the issues subject to this notice, should have advised Customs during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking 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, Customs 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 Harmonized Tariff Schedule of the United States Annotated (HTSUSA). Any person involved in substantially identical transactions should have advised Customs during the 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 the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Dated: September 27, 2002.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 27, 2002.

CLA–2 RR:TC:TE 963642 TMF
Category: Classification
Tariff No. 6505.90.2060

MR. JACK ALSUP, ESQ.
ALSUP & ASSOCIATES
P.O. Box 1251
Del Rio, TX 78841

Re: Revocation of HQ 085174; cotton/polyester cap and cap crown.

DEAR MR. ALSUP:

In Headquarters Ruling Letter (HQ) 085174, issued to you, September 7, 1989, Customs classified a cap and cap crown in subheadings 6505.90.8060 and 6505.90.2500, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), respectively. Subheading 6505.90.8060 essentially provided for hats and other headgear, made up of textile fabric, of man-made fibers. Subheading 6505.90.2500 essentially provided for hats and other headgear, of cotton textile fabric.

Upon review of HQ 085174, Customs has determined that this merchandise was erroneously classified. Therefore, this ruling revokes HQ 085174.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of this ruling was published on August 28, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 35. No comments were received in response to the notice.

Facts:

The merchandise at issue is a cap and a cap crown. The cap is composed of a 65 percent polyester/35 percent cotton woven fabric. It is a standard cap with a crown and bill and it is adjustable in the back. The words "The Classic" are embroidered on the front of the crown.

The crown is made of a 65 percent polyester/35 percent cotton woven fabric with an interior stiffener made of 100 percent cotton woven fabric. The importer states that the combined weight of the cotton in the outer shell and the interior stiffener outweighs the fabric of man-made fibers. The crown was to be made into a cap similar to the one at issue. The crown had the word "Titleist" embroidered on the front.

Issue:

What is the classification of the subject cap and cap crown within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Where goods cannot be classified solely on the basis of GRI 1 and if the headings or legal notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUSA. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The cap is a type of headgear. *Merriam Webster's Collegiate Dictionary*, Tenth Edition (1999), defines headgear as a covering or protective device for the head. Rulings issued by Customs have based the definition of headgear on the *Random House Dictionary of the English Language*, Unabridged Edition (1983), which describes headgear as "any covering for the head, esp. a hat, cap, bonnet, etc." *See* HQ 087539, dated September 20, 1990.[1] We refer to the General Explanatory Note to Chapter 65, which offers an expansive definition of the term "headgear":

> With the **exception** of the articles listed below [*see footnote 2*] this Chapter covers hat-shapes, hat-forms, hat bodies and hoods, and hats and other headgear of all kinds, irrespective of the materials of which they are made and of their intended use (daily wear, theatre, disguise, protection, etc.).
>
> It also covers hair-nets of any material and certain specified fittings for headgear.
>
> The hats and other headgear of this Chapter may incorporate trimmings of various kinds and of any material, including trimmings made of the materials of Chapter 71.

Concerning the cap crown, it was noted in HQ 085174, that "In its unfinished state, it resembles a beanie." *Merriam Webster's Collegiate Dictionary*, defines "beanie" as a small round tight-fitting skullcap worn especially by schoolboys and college freshmen. Therefore, as the merchandise entirely covers the wearer's head, we consider the cap crown to be a type of headwear.

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[1] In HQ 087539, it is noted that "Certain articles (wigs, shawls, veils) which may be worn on the head are excluded from Chapter 65 either by the Chapter Notes or the Explanatory Notes, while other articles such as headphones are provided for in heading 8518, HTSUSA. Finally, we do not consider headbands, sweatbands and barrettes, which are worn on the head or in the hair in order to keep hair out of the eyes or off the forehead to be classifiable as headgear."

[2] The noted exceptions to Chapter 65 are as follows:

(a) Headgear for animals (heading 42.01).
(b) Shawls, scarves, mantillas, veils and the like (heading 61.17 or 62.14).
(c) Headgear showing signs of appreciable wear and presented in bulk, bales, sacks or similar bulk packings (heading 63.09).
(d) Wigs and the like (heading 67.04).
(e) Asbestos headgear (heading 68.12).
(f) Dolls' hats, other toy hats or carnival articles (Chapter 95).
(g) Various articles used as hat trimmings (buckles, clasps, badges, feathers, artificial flowers, etc.) when not incorporated in headgear (appropriate headings).

Further, the crown likely constitutes an incomplete or unfinished cap. Where merchandise is incomplete or unfinished, we look to GRI 2(a), which provides, in pertinent part:

> Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article.

We find that the cap crown has the essential character of the complete cap. Both articles are composed of 65 percent polyester and 35 percent woven cotton with an interior stiffener of 100 percent cotton. We refer to Note 2(A) to Section XI which states, in part:

> Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material.

This note is applicable to the merchandise at issue by application of Additional U.S. Rule of Interpretation 1(d) which states that "the principles of section XI regarding mixtures of two or more textile materials shall apply to the classification of goods in any provision in which a textile material is named."

The outer surface of both the cap and crown is composed of a woven blend of 65 percent polyester and 35 percent cotton and each has an interior stiffener made of 100 percent cotton woven fabric. Customs properly determined that the combined weight of the cotton outershell and the interior stiffener weighs more than the polyester material pursuant to Section Note 2(A). The cap was therefore misclassified in subheading 6505.90.8060, HTSUSA because its cotton material outweighs the fabric of man-made fibers. As the cotton predominates by weight over the polyester material, the cap is classified within subheading 6505.90.2060, HTSUSA. Since the cap crown has the essential character of the complete or finished cap, it is classified in this same provision as headwear of cotton.

Holding:

HQ 085174, dated September 7, 1989, is hereby revoked.

The cap and cap crown are classified in subheading 6505.90.2060, HTSUSA, textile category 359, which provides for "Hats and other headgear * * *: Other: Of cotton, flax or both: Not knitted: Certified hand-loomed and folklore products; and headwear of cotton, Other." The general column one duty rate is 7.6 percent *ad valorem*.

The designated textile and apparel category may be subdivided into parts. If so, the 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 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 updated weekly and 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, 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 Myles B. Harmon, Acting Director,,
Commercial Rulings Divison.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 27, 2002.

CLA–2 RR:TC:TE 963643 TMF
Category: Classification
Tariff No. 6505.90.2060

YOLANDA LANDAU
MILTON SNEDEKER CORPORATION
105 Chambers Street
New York, NY 10007

Re: Revocation of HQ 087327; cotton hood with Orlon® pile lining.

DEAR MS. LANDAU:

In Headquarters Ruling Letter (HQ) 087327, issued to you, July 3, 1990, Customs classified a cotton hood with Orlon® pile lining in subheading 6505.90.2500, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), which essentially provided for hats and other headgear, of cotton textile fabric.

Upon review of HQ 087327, Customs has determined that the hood was erroneously classified. Therefore, this ruling revokes HQ 087327.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of this ruling was published on August 28, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 35. No comments were received in response to the notice.

Facts:

The article at issue is described in HQ 087327 as being a hood made of a 100 percent cotton outer material which was lined with an Orlon® pile material. (Orlon® is a trademark owned by Du Pont for acrylic staple fiber.) A knit fabric edge lined the top front opening of the hood, presumably for added warmth and wind blockage. A drawstring on the bottom edge of the hood provided an adjustable fit; a hook and loop tab secured the front flap closure, and two snaps were in place at the bottom rear of the hood. The descriptive literature included with the submission stated that the snaps were intended for attachment of style no. 332 jacket and style no. 543 overall manufactured by importer, either of which were available for separate purchase, but the hood at issue is imported separately.

Issue:

What is the classification of the cotton hood within the Harmonized Tariff Schedule of the United States Annotated (HTSUSA)?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. Where goods cannot be classified solely on the basis of GRI 1 and if the headings or legal notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

Additionally, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) are the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUSA. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Merriam Webster's Collegiate Dictionary, Tenth Edition (1999), defines headgear as a covering or protective device for the head. Rulings issued by Customs have based the definition of headgear on the *Random House Dictionary of the English Language*, Unabridged Edition (1983), which describes headgear as "any covering for the head, esp. a

hat, cap, bonnet, etc." *See* HQ 087539, dated September 20, 1990.[1] We refer to the General Explanatory Note to Chapter 65, which offers an expansive definition of the term "headgear":

> With the **exception** of the articles listed below [*see footnote 2*] this Chapter covers hat-shapes, hat-forms, hat bodies and hoods, and hats and other headgear of all kinds, irrespective of the materials of which they are made and of their intended use (daily wear, theatre, disguise, protection, etc.).
>
> It also covers hairnets of any material and certain specified fittings for headgear.
>
> The hats and other headgear of this Chapter may incorporate trimmings of various kinds and of any material, including trimmings made of the materials of Chapter 71.

EN (9) to heading 6505 indicates that the heading covers "Hoods," and that detachable hoods presented with the garments to which they belong are excluded from heading 6505 and classified with the garments according to their constituent materials. In the instant case as the hood is imported separately from the jacket and overalls, it is classified within heading 6505.

The outer surface of the hood is composed of 100 percent woven cotton fabric. Orlon® pile material lines the inside. Since the hood is composed of more than one material, we look to GRI 2(b), which, in pertinent part, states:

> [t]he classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.

GRI 3 provides:

> When, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows: [under GRI 3a and 3b]

GRI 3(a) directs that the headings are regarded as equally specific when each heading refers to part only of the materials contained in composite goods. In this case, the relevant headings are headings 5208, HTSUSA, which provides for woven cotton fabrics, and heading 5515 HTSUSA, which provides for other woven fabrics of synthetic staple fibers.

To determine under which provision the hood should be classified, we look to GRI 3(b), which states:

> Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

We must consider Explanatory Note IX to GRI 3(b), which states:

> For the purposes of this Rule, composite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

The woven cotton and Orlon® fabrics are practically inseparable layers sewn together to form a hood. The interior Orlon® material provides warmth for the wearer's head and the exterior cotton is the more visible material. We find that the hood is a composite good.

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[1] In HQ 087539, it is noted that "Certain articles (wigs, shawls, veils) which may be worn on the head are excluded from Chapter 65 either by the Chapter Notes or the Explanatory Notes, while other articles such as headphones are provided for in heading 8518, HTSUSA. Finally, we do not consider headbands, sweatbands and barrettes, which are worn on the head or in the hair in order to keep hair out of the eyes or off the forehead to be classifiable as headgear."

[2] The noted exceptions to Chapter 65 are as follows:

(a) Headgear for animals (heading 42.01).
(b) Shawls, scarves, mantillas, veils and the like (heading 61.17 or 62.14).
(c) Headgear showing signs of appreciable wear and presented in bulk, bales, sacks or similar bulk packings (heading 63.09).
(d) Wigs and the like (heading 67.04).
(e) Asbestos headgear (heading 68.12).
(f) Dolls' hats, other toy hats or carnival articles (Chapter 95).
(g) Various articles used as hat trimmings (buckles, clasps, badges, feathers, artificial flowers, etc.) when not incorporated in headgear (appropriate headings)

As a composite good is classified by the material that imparts its essential character, we refer to Explanatory Note VIII to GRI 3(b), which provides the following guidance:

> The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

In this case, the outer surface of cotton most significantly contributes to the overall appearance of the hood; it being far more visible to the eye than the Orlon® material. Further, the outer surface of cotton provides the shape of the hood as well as being capable of matching and attaching to the separately sold jacket and overalls. Therefore, we find that the outer surface of cotton imparts the hood's essential character.

In light of the above analysis, the hood is classified in subheading 6505.90.2060, HTSUSA, which provides, *eo nomine*, for headwear of cotton.

Holding:

HQ 087327, dated July 3, 1990, is hereby revoked.

The woven cotton hood is classified in subheading 6505.90.2060, HTSUSA, textile category 359, which provides for "Hats and other headgear * * *: Other: Of cotton, flax or both: Not knitted: Certified hand-loomed and folklore products; and headwear of cotton, Other." The general column one duty rate is 7.6 percent *ad valorem*.

The designated textile and apparel category may be subdivided into parts. If so, the 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 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 updated weekly and 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, 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 Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

MODIFICATION OF TWO RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF SLEEP GARMENTS

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

ACTION: Notice of modification of two tariff classification ruling letters and treatment relating to the classification of certain sleepwear garments.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is modifying New York Ruling Letter (NY) I80792, issued April 25, 2002, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a man's sleep pants, style 505–0503, and NY H80784, issued June 5, 2001, relating to the tariff classification under the HTSUSA, of a woman's two piece pajama set, style 733808. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed modification was published on August 28, 2002, in the CUSTOMS BULLETIN. 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 December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Shirley Greitzer, Textiles Branch: (202) 572–8823.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on August 28, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 25, proposing to modify New York decisions (NY) I80792, dated April 25, 2002, and NY H80784, dated June 5, 2001, pertaining to the tariff classification of a women's pajama and a men's sleep pant. No comments were received in response to this notice.

As stated in the proposed notice, the modification will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs 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 Harmonized Tariff Schedule of the United States Annotated. Any person involved with substantially identical merchandise should have advised Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling concerning the merchandise covered by this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise, subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY I80792 and NY H80784 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965633 and HQ 965561. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

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

Dated: October 1, 2002.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 27, 2002.

CLA–2 RR:CR:TE 965633 SG
Category: Classification
Tariff No. 6207.91.3010

MS. DANA N. MOBLEY
CUSTOMS ANALYST
JCPENNEY PURCHASING CORPORATION
P.O. Box 10001
Dallas, TX 75301

Re: Modification of New York Ruling Letter (NY) I80792, dated April 25, 2002; Men's Sleep Pants from Indonesia.

DEAR MS. MOBLEY:

This letter is in response to your letter dated May 7, 2002, in which you requested reconsideration of New York Ruling Letter (NY) I80792, issued on April 25, 2002, in which Customs classified a men's garment, style 505–0503, in subheading 6203.42.4015, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for men's and boys' trousers, bib and brace overalls, breeches and shorts, of cotton, other, other, trousers and breeches, men's, other. Your letter along with a sample was forwarded to this office for our reply. We have reviewed the ruling and have found it to be partially in error. Therefore, this ruling modifies NY I80792.

Pursuant to section 625(c), Tariff Act of 1903, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY I80792 was published on August 28, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 35.

Facts:

The merchandise at issue is described as a pair of men's 100 percent woven cotton sleepwear pant, JCPenney style number 505–0503. The garment has an elasticized waistband with a fully functional drawstring, and hemmed pant leg bottoms. The pants do not have pockets. It has a placketed fly approximately 8 inches in length. The fly is sewn shut for 2.5 inches from the top of the waistband and sewn shut from the bottom for 2 inches, leaving an unsecured fly opening of approximately 4½ inches.

It is claimed that although the open fly is smaller than some sleepwear pants, the wearer would not wear this garment outside without a closure. It is also claimed that the fact that the garment does not have pockets in which to carry keys or change, the wearer would likely not wear these outside of the home. It is claimed that the correct classification is under subheading 6207.91.3010, as men's sleepwear.

Issue:

Whether the merchandise, style 505–0503, was properly classified as an outerwear garment under heading 6203, HTSUS, or is a sleepwear garment under heading 6207, HTSUS?

Law and Analysis:

The General Rules of Interpretation (GRI's) govern classification of goods under the HTSUSA. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), although not dispositive nor legally binding, provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128, (August 23, 1989).

In order to determine whether or not the garment is sleepwear, Customs considers the factors discussed in two decisions of the Court of International Trade. In *Mast Industries, Inc. v United States*, 9 CIT 549, 552 (1985), aff'd 786 F.2d 1144 (CAFC, April 1, 1986), the court dealt with the classification of a garment claimed to be sleepwear and cited *Webster's Third New International Dictionary* which defined "nightclothes" as "garments to be worn to bed." In *Mast*, the court ruled that the garments at issue were designed, manufac-

tured, and marketed as nightwear and were chiefly used as nightwear. Similarly, in *St. Eve International, Inc. v. United States*, 11 CIT 224 (1987), the court ruled that the garments at issue were designed, manufactured, and advertised as sleepwear and were chiefly used as sleepwear.

In the recent case of *International Home Textile, Inc. v. United States*, 21 CIT 280, March 18, 1997, the Court of International Trade addressed the issue of whether certain men's garments were properly classified under the provision for cotton pants, shorts and tops or as sleepwear under the HTSUSA. The court held that in order to be classified as sleepwear, the loungewear items at issue must share that essential character of being for a "private activity", e.g., sleeping. The court also stated that garments classified as sleepwear would be inappropriate for use at "informal social occasions in and around the home, and for other individual, non-private activities in and around the house e.g., watching movies at home with guests, barbequing at a backyard gathering, doing outside home and yard maintenance work, washing the car, walking the dog, and the like."

In past rulings, Customs has stated that the crucial factor in the classification of a garment is the garment itself. As the court pointed out in *Mast,* "the merchandise itself may be strong evidence of use." *Mast* at 552, citing *United States v. Bruce Duncan Co.*, 50 CCPA 43, 46, C.A.D. 817 (1963). However, when presented with a garment which is somewhat ambiguous and not clearly recognizable as sleepwear or underwear or outerwear, Customs will consider other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise, such as purchase orders, invoices, and other internal documentation. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. For instance, Customs recognizes that internal documentation and descriptions on invoices may be self-serving as was noted by the court in *Regaliti, Inc. v. United States,* 16 CIT 407 (May 21, 1992). We have long acknowledged that intimate apparel/sleepwear departments often sell a variety of merchandise besides intimate apparel, including garments intended to be worn as outerwear. See Headquarters Ruling Letter (HQ) 955341 of May 12, 1994.

In the instant case, a physical examination of the garment at issue reveals that the design is somewhat ambiguous due to both the styling features and the smaller than usual opening of the unsecured fly. It is our view that although the unsecured fly opening is somewhat smaller than those we have seen on comparable garments, the unsecured fly opening is large enough that is does not satisfy the conventional standards of modesty necessary on a garment that would be worn for the type of non-private activities named in *International Home Textiles, Inc.* An open fly is a feature whose defining characteristic is privateness or private activity, which is indicative of sleepwear and pajamas.

Although the subject garment could possibly be used for social activity inside the home, it is our view that because of the unsecured fly; it would be inappropriate to wear this garment while participating in any "* * * non-private activities in and around the house * * *.". It is our view that this use would be a fugitive use. In *Hampco Apparel, Inc. v. United States,* 12 CIT 92 (1988), the Court of International Trade stated: "The fact that a garment could have a fugitive use or uses does not take it out of the classification of its original and primary use. The primary design, construction, and function of an article will be determinative of classification, whether or not there is an incidental or subordinate function." In this case, because the submitted sample is capable of being used to lounge inside the home does not change what is its principal use and character as sleepwear. Thus, it is our determination that this garment has the essential character of privateness, i.e. of being used for the private activity of sleeping. The garment identified as style 505–0503 is therefore properly classifiable as a sleep garment, not outerwear. See HQ 963519, dated July 16, 2002, wherein we ruled that almost identical pants were classified as sleepwear.

Heading 6207, HTSUS, provides for, *inter alia*, pajamas and similar articles. Customs has consistently ruled that pajamas are generally two-piece garments worn for sleeping, one-piece garments such as these under consideration have been classified as other woven sleepwear.

Holding:

The instant merchandise is properly classified under the provision for "Men's or boys' singlets and other undershirts, underpants, briefs, nightshirts, pajamas, bathrobes, dressing gowns and similar articles: Other: Of cotton: Other: Sleepwear", in subheading

6207.91.3010, HTSUSA, and is dutiable under the general column one rate of 6.2 percent ad valorem. The textile category for this provision is 351.

The designated textile and apparel category may be subdivided into parts. If so, the 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 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 updated weekly and is available for inspection at your local Customs office. The *Status Report on Current Import Quota (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.treas.gov.

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

Effects on Other Rulings:

NY I80792 issued on April 25, 2002, is MODIFIED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 27, 2002.

CLA–2 RR:CR:TE 965561 SG
Category: Classification
Tariff No. 6108.31.0010,
6106.20.2010, and 6104.63.2011

MS. JULIE GIMM, COMPLIANCE
BDP INTERNATIONAL INC.
2721 Walker Avenue, NW
Grand Rapids, MI 49504

Re: Modification of New York Ruling Letter (NY) H80784, dated June 5, 2001; Women's Pajama Set.

DEAR MS.GIMM:

This letter is in response to your letter dated April 1, 2002, in which you requested reconsideration of New York Ruling Letter (NY) H80784, issued on June 5, 2001, in which Customs classified women's two piece "pajama sets" in heading 6106, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for women's knitted blouses and shirts, and 6104, HTSUSA, which provides for women's knit trousers. We have reviewed that ruling and have found it to be partially in error. Therefore, this ruling modifies NY H80784.

Pursuant to section 625(c), Tariff Act of 1903, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY H80784 was published on August 28, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 35.

Facts:

The merchandise identified as style 733808 is described as a woman's two-piece pajama set. It is constructed from 60% cotton and 40% polyester knit fabric. It consists of a shirt styled top and pull-on pants. The top features a banded neckline, full button front with one

upper left chest pocket, long sleeves with rib knit cuffs, and a hemmed bottom. The pull-on pants have an elasticized waistband and rib knit cuffs at the leg openings. The top is made mainly of two different types of fabric: thermal knit raglan sleeves; and a full front and back of jersey knit that has been brushed on the inside. The top has more than ten stitches per centimeter in both the horizontal and vertical directions. The pants are mainly constructed from thermal knit fabric.

The merchandise identified as style 733786 is described as a woman's two-piece pajama set. It is constructed from 100% polyester knit fabric heavily brushed on both sides. It consists of a pullover shirt styled top and coordinating pull-on pants. The top has a rounded neckline, a partial placket opening with a three-button closure, an upper left chest pocket, long sleeves with cuffs, and a hemmed bottom with three-inch side slits. The pants have an elasticized waistband and hemmed leg openings. The fabric has more than ten stitches per centimeter in both the horizontal and vertical directions.

You advise that the pajama sets will be sold in Meijer retail stores throughout the Midwest and that both styles will be sold exclusively under the "Simple Pleasures" brand name. You indicate that "Simple Pleasures" is a Meijer private label name for apparel sold exclusively in the Meijer Sleepwear Department. You attach samples of the "Simple Pleasures" labels from the Meijer corporate brands website. You indicate that these labels will be sewn into the garments themselves. You state that the garments are sold with the intention that they will be worn as sleepwear articles and not worn outside the privacy of one's home.

Issue:

Whether the merchandise was properly classified as outerwear garments under headings 6104 and 6106, HTSUS, or is pajamas sets under heading 6108, HTSUS?

Law and Analysis:

The General Rules of Interpretation (GRI's) govern classification of goods under the HTSUSA. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order. The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), although not dispositive nor legally binding, provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128, (August 23, 1989).

In determining the classification of garments submitted to be sleepwear, Customs usually considers the factors discussed in two court cases that addressed sleepwear. In *Mast Industries, Inc. v. United States*, 9 CIT 549, 552 (1985), aff'd 786 F.2d 144 (CAFC, 1986), the Court of International Trade considered the classification of a garment claimed to be sleepwear. The court cited several lexicographic sources, among them *Webster's Third New International Dictionary* which defined "nightclothes" as "garments to be worn to bed." In *Mast*, the court determined that the garment at issue therein was designed, manufactured, and used as nightwear and therefore was classifiable as nightwear. Similarly, in *St. Eve International, Inc. v. United States*, 11 CIT 224 (1987), the court ruled the garments at issue therein were manufactured, marketed and advertised as nightwear and were chiefly used as nightwear. Finally, in *Inner Secrets/Secretly Yours, Inc. v. United States*, 885 F. Supp. 248 (1995), the court was faced with the issue of whether women's boxer-style shorts were classifiable as "outerwear" under heading 6204, HTSUS, or as "underwear" under heading 6208, HTSUS. The court stated the following, in pertinent part:

> [P]laintiff's preferred classification is supported by evidence that the boxers in issue were designed to be worn as underwear and that such use is practical. In addition, plaintiff showed that the intimate apparel industry perceives and merchandises the boxers as underwear. While not dispositive, the manner in which plaintiff's garments are merchandised sheds light on what the industry perceives the merchandise to be. * * * Further, evidence was provided that plaintiff's merchandise is marketed as underwear. While advertisements also are not dispositive as to correct classification under the HTSUS, they are probative of the way that the importer viewed the merchandise and of the market the importer was trying to reach.

Furthermore, we bring your attention to *International Home Textile, Inc*., 21 CIT 280, March 18, 1997, which classified garments as outerwear in headings 6103 and 6105, HTSUS. The court therein stated:

> Based upon a careful examination of the loungewear as well as the testimony of the various witnesses, the court finds that the loungewear items at issue do not share that essential character of privateness or private activity. As the parties have already stipulated, the loungewear is used primarily for lounging and not for sleeping. The court finds no basis in the exhibits, the witness testimony, or the loungewear's construction and design to find that it is inappropriate, at a minimum, for the loungewear to be worn at informal social occasions in and around the home, and for other individual, non-private activities in and around the house e.g., watching movies at home with guests, barbequing at a backyard gathering, doing outside home and yard maintenance work, washing the car, walking the dog, and the like. * * *

In your request for reconsideration you admitted that the sample garments can be worn for other than sleeping. You argue, however, that the controlling use is principal use, and that is as sleepwear. You state that the garments were designed, manufactured, marketed, and intended for use as sleepwear. In addition you claim that the print on the garments is clearly that of sleepwear and would not be worn out in public. Additionally, it is your belief that the following features are congruous with the garments classification as women's pajamas: the lack of pockets on the pants, the print used on the garments, and the loose construction and styling.

We have physically examined both of the two-piece garments at issue, and will address each separately.

Style 733786

We do not agree that the physical characteristics of the two-piece garment identified as style 733786, nor the manner in which it has been designed, marketed or sold are limited to sleepwear or intimate apparel. The physical characteristics of this style 733786 is such that it can easily be used as either sleepwear or as non-intimate apparel. The fleece fabric of which it is constructed is used for both types of garments. The appearance of this two-piece garment is, in fact, ambiguous. Although you claimed the sample was designed as sleepwear, no specific information concerning the design was submitted. Nothing about the design or appearance of the sample makes it unsuitable for use as sleepwear. However, the counter argument that nothing about the design or appearance makes the sample unsuitable for use as general apparel is equally true. In such circumstances, the principal use may be determined by the manner in which the garment is designed, marketed and sold.

In past rulings, Customs has stated that the crucial factor in the classification of a garment is the garment itself. As the court pointed out in *Mast,* "the merchandise itself may be strong evidence of use. "*Mast* at 552, citing *United States v. Bruce Duncan Co.*, 50 CCPA 43, 46, C.A.D. 817 (1963). However, when presented with a garment which is somewhat ambiguous and not clearly recognizable as sleepwear or underwear or outerwear, Customs will consider other factors such as environment of sale, advertising and marketing, recognition in the trade of virtually identical merchandise, and documentation incidental to the purchase and sale of the merchandise, such as purchase orders, invoices, and other internal documentation. It should be noted that Customs considers these factors in totality and no single factor is determinative of classification as each of these factors viewed alone may be flawed. For instance, Customs recognizes that internal documentation and descriptions on invoices may be self-serving as was noted by the court in *Regaliti, Inc. v. United States,* 16 CIT 407 (May 21, 1992). We have long acknowledged that intimate apparel/sleepwear departments often sell a variety of merchandise besides intimate apparel, including garments intended to be worn as outerwear. See HQ 955341 of May 12, 1994.

Customs does not find the fact that "Simple Pleasures" is a private label for apparel sold exclusively in the Meijer Sleepwear Department of particular significance. What we do find of importance is the 2-piece garment itself and the manner in which the garment will be presented to the public.

The sample will be imported with a label sewn into it saying "Simple Pleasures" but nothing else. There is a sample tag on the sample garment that describes it as a "Ladies Lounge Set". No other advertising or information was submitted. Based on the above, it is our view that the information submitted does not show that the style 733786 is merchandised to the consumer as a garment to be worn exclusively, or even principally, as sleepwear.

In your submission you concede that all the submitted garments may be used as outerwear (albeit inside the home). You however argue that this use would be a fugitive use. In *Hampco Apparel, Inc. v. United States,* 12 CIT 92 (1988), the Court of International Trade stated: "The fact that a garment could have a fugitive use or uses does not take it out of the classification of its original and primary use. The primary design, construction, and function of an article will be determinative of classification, whether or not there is an incidental or subordinate function." It is your stated view that just because the sample, style 733786, is capable of being used to lounge around the home does not change the claim that its principal use and character is as sleepwear.

As the court noted in *Mast*, at 551, "most consumers purchase and use a garment in the manner in which it is marketed." In our view, style 733786 is a multi-purpose garment and nothing provided to Customs suggests the garment is presented to consumers as designed or intended for wear while sleeping. Thus, Customs does not agree that this garment is presented to consumers as sleepwear garments.

Based on our examination of the sample identified as style 733786, we find that it is loungewear, i.e., loose, casual clothes that are worn in and around the home for comfort. Its fabric, construction and design are suitable for the type of non-private activities named in *International Home Textile, Inc*. Finally, although the garment may be worn to bed for sleeping, in our opinion its principal use is for "home comfort" and lounging. This garment can easily make the transition from inside the home (in a private setting) to outside the home (and a more social environment). In addition, the sample submitted is made of fabric heavy enough for outdoor use.

Taking into consideration all of the information before us, especially the two- piece garment (style 733786) itself, Customs believes this garment was properly classified as outerwear not as sleepwear.

Style 733808

Insofar as style 733808 is concerned, a physical examination of the sample at issue reveals that the design is such that it can easily be used as sleepwear or as intimate apparel. We note that the hangtag on the garment states that it is a 2-piece ladies' pajama. Thus, Customs agrees that this garment is presented to consumers as a sleepwear garment.

Although the subject garment could possibly be used for social activity inside the home, it is our view that one would not wear this garment while participating in any non-private activities such as those named in *International Home Textile, Inc*. It is our view that any such use would be a fugitive use. In this case, because the submitted sample is capable of being used to lounge inside the home does not change its principal use and character as sleepwear. Thus, it is our determination that this garment has the essential character of being used for the private activity of sleeping. The garment identified as style 733808 is therefore properly classifiable as a pajama set, not as loungewear.

Holding:

The sample identified as style 733808 is properly classified under the provision for "Women's or girls' slips, petticoats, briefs, panties, nightdresses, pajamas, negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted: Nightdresses and pajamas: Of cotton: Women", in subheading 6108.31.0010, HTSUSA, and is dutiable under the general column one rate of 8.6 percent ad valorem. The textile category for this provision is 351.

The sample identified as style 733786 was properly classified in NY H80784 as outerwear separates. The top is classifiable under the provision for "Women's or girls' blouses and shirts, knitted or crocheted: Of man-made fibers: Other: Women's", in subheading 6106.20.2010, HTSUSA, and is dutiable under the 2002 general column one rate of 32.5 percent ad valorem. The textile category for this provision is 639. The bottom is classifiable under the provision for "Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear), knitted or crocheted: Trousers, bib and brace overalls, breeches and shorts: Of synthetic fibers: Other: Other: Trousers and breeches: Women's: Other", in subheading 6104.63.2011, and is dutiable under the 2002 general column one rate of 28.6 percent ad valorem. The textile category for this provision is 648.

The designated textile and apparel category may be subdivided into parts. If so, the 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 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 updated weekly and is available for inspection at your local Customs office. The *Status Report on Current Import Quota (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.treas.gov.

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

Effects on Other Rulings:

NY H80784 issued on June 5, 2001, is MODIFIED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF MOTOR VEHICLE PLASTIC SEAT KNOB

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

ACTION: Notice of revocation of a ruling letter and treatment relating to the tariff classification of motor vehicle plastic seat knob.

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 is revoking a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of motor vehicle plastic seat knobs and revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed action was published in the CUSTOMS BULLETIN on August 28, 2002. No comments were received in response to this notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 572–8782.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on August 28, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 35, proposing to revoke NY G80939 dated August 18, 2000, pertaining to the tariff classification of motor vehicle plastic seat knobs. No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by the Customs Service 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, Customs 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 Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to have advised the Customs Service 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 their agents for importations of merchandise subsequent to the effective date of this final notice.

In NY G80939, dated August 18, 2000, Customs found that the subject motor vehicle plastic seat knob was classified in subheading 9401.90.1080, HTSUS, as seats (other than those of heading 9402),

whether or not convertible into beds, and parts thereof, parts, of seats of a kind used for motor vehicles, other. Customs has reviewed the matter and determined that the correct classification of the motor vehicle plastic seat knobs are in subheading 3926.30.10, HTSUS, as other articles of plastics, fittings for furniture, coachwork or the like, handles and knobs.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY G80939 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 965482 (see the "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

Dated: September 30, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 30, 2002.

CLA–2 RR:CR:GC 965482 KBR
Category: Classification
Tariff No. 3926.30.10

MR. ROBERT RESETAR
PORSCHE CARS NORTH AMERICA, INC.
980 Hammond Drive, Suite 1000
Atlanta, GA 30328

Re: Reconsideration of NY G80939; motor vehicle plastic seat knobs.

DEAR MR. RESETAR:

This is in reference to New York Ruling Letter (NY) G80939, issued to you by the Customs National Commodity Specialist Division, dated August 18, 2000, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a motor vehicle plastic seat knob from Germany. We have reviewed that ruling and determined that the classification set forth is in error.

Pursuant to section 625(c)(1), 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), a notice was published on August 28, 2002, in Vol. 36, No. 35 of the CUSTOMS BULLETIN, proposing to revoke NY G80939. No comments were received in response to this notice. This ruling revokes NY G80939 by providing the correct classification for the motor vehicle plastic seat knob.

Facts:

NY G80939 concerned a motor vehicle plastic seat knob made of injection molded plastic. The knob attaches onto a lever that connects to a mechanical cable that activates a

latch, which holds the seat backrest in place. When moved upward, the lever/cable disengages the backrest latch and allows the backrest to be moved forward for access to the back seat of the motor vehicle. The knob is dedicated for and can only be used on the motor vehicle seat. The ruling classified the seat knob in subheading 9401.90.1080, HTSUS, which provides for seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof, parts, of seats of a kind used for motor vehicles, other.

Issue:

What is the classification of the motor vehicle plastic seat knob?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.30	Fittings for furniture, coachwork or the like:
3926.30.10	Handles and knobs
8302	Base metal mountings, fittings and similar articles suitable for furniture, doors, staircases, windows, blinds, coachwork, saddlery, trunks, chests, caskets or the like; base metal hat racks, hat-pegs, brackets and similar fixtures; castors with mountings of base metal; automatic door closers of base metal; and base metal parts thereof:
8302.30	Other mountings, fittings and similar articles suitable for motor vehicles; and parts thereof:
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
9401.90	Parts:
9401.90.10	Of seats of a kind used for motor vehicles

NY G80939 classified the motor vehicle seat knob in subheading 9401.90.10, HTSUS. However, Chapter 94 Note 1(d), HTSUS, states that the chapter does not cover "[p]arts of general use as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39), or safes of heading 8303". Included within this definition of "parts of general use" are articles within heading 8302, HTSUS. The ENs for heading 8302 at paragraph (E)(5) state that this heading includes as mountings and fittings and similar articles suitable for furniture, "handles and *knobs*" (emphasis added). The ENs at (C) specifically states that articles within this heading include parts for automobiles, and in its preliminary paragraph also states that "[g]oods within such general classes remain in this heading even if they are designed for particular uses (e.g., door handles or hinges for automobiles)." *See* HQ 962183 (June 2, 1999), HQ 962046 January 13, 1999).

NY C89088 (August 8, 1998), found that a plastic knob for an automobile sunroof was a "parts of general use" and therefore the exclusionary note applied. The plastic knob was found to be a similar good to that included in heading 8302, HTSUS, but because it was plastic, the knob should therefore be classified in subheading 3926.30.10, HTSUS. *See also* NY H88198 (February 13, 2002) (involving a lumbar adjuster knob).

Therefore, Customs finds that Note 1(d) excludes the instant plastic motor vehicle seat knob from classification in Chapter 94. The classification in NY G80939 is, therefore, incorrect. Customs finds that the correct classification for the plastic motor vehicle seat knob is in subheading 3926.30.10, HTSUS, as other articles of plastics and articles of other materials of heading 3901 to 3914, fittings for furniture, coachwork and the like, handles and knobs.

Holding:

In accordance with the above discussion, the correct classification for the plastic motor vehicle seat knob is in subheading 3926.30.10, HTSUS, as other articles of plastics and articles of other materials of heading 3901 to 3914, fittings for furniture, coachwork and the like, handles and knobs.

Effect on Other Rulings:

NY G80939 dated October 9, 1997, is REVOKED. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF SPOONS

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

ACTION: Notice of revocation of ruling letters relating to the tariff classification of spoons.

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 is revoking three ruling letters pertaining to the tariff classification of spoons. Customs is also revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed action was published in the CUSTOMS BULLETIN on August 28, 2002. No comments were received in response to the notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Bill Conrad, Regulations Branch, (202) 572–8764.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on 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 to 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on August 28, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 35, proposing to revoke New York Ruling Letter (NY) D86420, dated January 7, 1999, NY E86257, dated September 9, 1999, and NY E88103, dated December 20, 1999. No comments were received during the comment period.

As stated in the proposed notice, the revocation will also cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. This treatment may, among other reasons, be the result of the importer's reliance on a ruling letter issued to a third party, Customs 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 Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In NY D86420 and NY E86257, Customs classified certain spoons made of base metal with plastic or rubber handles in subheading 8215.99.4500, HTSUS, which provides for: Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen tableware; * * *: Other: Other: Spoons and ladles: Other. In NY

E88103, a reconsideration of NY E86257, Customs classified the spoons in subheading 8215.99.5000, HTSUS, which provides for: Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen tableware; * * *: Other: Other: Other (including parts). Since their issuance, Customs has reconsidered each ruling and determined that the spoons are classifiable under subheading 8215.99.4060, HTSUS, which provides for: Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen or tableware; * * *: Other: Other: Spoons and ladles: With base metal (except stainless steel) or nonmetal handles * * * Other.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking the three ruling letters pertaining to the classification of spoons and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Letters 965794 (Attachment A) and 965032 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

Dated: September 30, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 30, 2002.

CLA–2 RR:CR:GC 965794 bc
Category: Classification
Tariff No. 8215.99.4060

ROBERT L. GARDENIER
M.E. DEY & CO.
5007 South Howell Avenue
P.O. Box 37165
Milwaukee, WI 53237–0165

Re: Spoons; NY D86420 revoked.

DEAR MR. GARDENIER:

This concerns NY D86420, issued to you on January 7, 1999, on behalf of Smith & Nephew Inc. Rehab Div., by the Director, Customs National Commodity Specialist Division, New York, regarding the classification of certain spoons under the Harmonized Tariff Schedule of the United States (HTSUS).

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 (Customs Modernization) of the North American Free Trade Agree-

ment Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), a notice was published on August 28, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 35, proposing to revoke NY D86420. No comments were received during the comment period.

As further explained below, in NY D86420, Customs classified the subject spoons under subheading 8215.99.4500, HTSUS, as spoons with handles made of something other than stainless steel, other base metals, or nonmetals. Customs has had the chance to review that ruling and finds it to be inconsistent with the HTSUS requirements for classification of such merchandise. It is now Customs position that the spoons at issue are properly classifiable under subheading 8215.99.4060, HTSUS, as spoons with nonmetal handles. For the reasons stated below, this ruling revokes NY D86420.

Facts:

In NY D86420, Customs described the spoons as made of base metal with large rubber grip handles, specially designed for people with physical disabilities or blindness. The samples submitted were for two styles: Style A703–205, the "Supergrip Bendable Utensil" and Style A703–200, the "Supergrip Utensil, Teaspoon." Based on this description, Customs classified the spoons under subheading 8215.99.4500, HTSUS, which provides for: Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen or tableware; and base metal parts thereof: Other: Other: Spoons and ladles: Other.

Issue:

Whether the spoons are classifiable under subheading 8215.99.4500, HTSUS, or subheading 8215.99.4060, HTSUS?

Law and Analysis:

Classification of goods under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relevant Section or Chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. The ENs, neither legally binding nor dispositive, provide a commentary on the scope of each heading of the HTSUS and are generally indicative of their proper interpretation. See Treasury Decision 89–80.

The relevant HTSUS provisions under consideration are as follows:

8215	Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen or tableware; and base metal parts thereof:
* * * * * * *	
8215.99	Other:
* * * * * * *	
	Spoons and ladles:
	With stainless steel handles:
8215.99.30	Spoons valued under 25 cents each
8215.99.35	Other
8215.99.40	With base metal (except stainless steel) or nonmetal handles
8215.99.45	Other
8215.99.50	Other (including parts)

Spoons (not plated with precious metal) are classifiable at the eight-digit level according to the composition of the handles. (Individual spoons, forks, etc., that are plated with precious metal are classifiable under subheading 8215.91, HTSUS.) Spoons with stainless steel handles are classifiable, depending on their value, under subheadings 8215.99.30 and 8215.99.35, HTSUS. Spoons with handles of base metal (except stainless steel) or nonmetal are classifiable under subheading 8215.99.40, HTSUS. Spoons with handles consisting of something other than stainless steel, other base metals, or non-metal, such as precious metal, are classifiable in subheading 8215.99.45, HTSUS. As the spoons at issue

have rubber handles and rubber is a nonmetal, they are not classifiable at the eight-digit level as spoons with handles of other than stainless steel, other base metals, or nonmetal in subheading 8215.99.45, HTSUS. Instead, they are classifiable as spoons with nonmetal handles (of rubber) in subheading 8215.99.40, HTSUS.

Holding:

NY D86420, dated January 7, 1999, is hereby REVOKED.

The base metal spoons with rubber handles are classifiable as spoons, other than tablespoons, with nonmetal handles in subheading 8215.99.4060, HTSUS.

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

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 30, 2002.

CLA–2 RR:CR:GC 965032 bc
Category: Classification
Tariff No. 8215.99.4060

PHILIP KWOK
LIFETIME HOAN CORPORATION
One Merrick Avenue
Westbury, NY 11590–6601

Re: Spoons; NY E86257 and NY E88103 revoked.

DEAR MR. KWOK:

This concerns NY E86257, dated September 9, 1999, and NY E88103, dated December 20, 1999, both issued to you by the Director, Customs National Commodity Specialist Division, New York, regarding the classification of certain spoons under the Harmonized Tariff Schedule of the United States (HTSUS).

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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), a notice was published on August 28, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 35, proposing to revoke NY E86257 and NY E88103. No comments were received during the comment period.

In NY E86257, Customs classified two types of spoons under subheading 8215.99.4500, HTSUS. In NY E88103, Customs reclassified the same spoons under subheading 8215.99.5000, HTSUS. The latter ruling was issued as a reconsideration of the former ruling. (Customs notes a typographical error in NY E88103 that shows subheading 8215.99.4060, HTSUS, in the "Tariff No." line of the header.) Customs has had the chance to review these rulings and finds them to be inconsistent with the HTSUS requirements for classification of such merchandise. It is now Customs position that the spoons at issue are properly classifiable under subheading 8215.99.4060, HTSUS. For the reasons stated below, this ruling revokes NY E86257 and NY E88103.

Facts:

In NY E86257 and NY E88103, Customs described the two types of spoons there classified as a slotted spoon (Item #83364) and a basting spoon (Item #83715), both made of stainless steel with plastic handles. The handles also have stainless steel sides and rubber non-slip grips (attached to the sides of the handle). In NY E86257, Customs classified both spoons in subheading 8215.99.4500, HTSUS, as: Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen or tableware; and base metal parts thereof: Other: Other: Spoons and ladles: Other. In NY E88103, Customs

reclassified both spoons in subheading 8215.99.5000, HTSUS, as: Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen or tableware; and base metal parts thereof: Other: Other: Other (including parts).

Customs, as explained below, now believes that the spoons are classifiable under subheading 8215.99.4060, HTSUS, as spoons (not plated with precious metal), other than tablespoons, with nonmetal handles. (Individual spoons, forks, etc, that are plated with precious metal are classifiable under subheading 8215.91, HTSUS.)

Issue:

Whether the spoons are classifiable under subheading 8215.99.3000, 8215.99.3500, 8215.99.4060, 8215.99.4500, HTSUS, or 8215.99.5000, HTSUS?

Law and Analysis:

Classification of goods under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relevant Section or Chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See Treasury Decision 89–80.

The relevant HTSUS provisions under consideration are as follows:

8215	Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen or tableware; and base metal parts thereof:
* * * * * * *	
8215.99	Other:
* * * * * * *	
	Spoons and ladles:
	With stainless steel handles:
8215.99.30	Spoons valued under 25 cents each
8215.99.35	Other
8215.99.40	With base metal (except stainless steel) or nonmetal handles
8215.99.45	Other
8215.99.50	Other (including parts)

Initially, classification in subheading 8215.99.5000, HTSUS, is readily disposed of by recognition of the fact that the spoons at issue are classifiable only under a subheading that provides for spoons, i.e., at the eight-digit level, 8215.99.30, 8215.99.35, 8215.99.40, or 8215.99.45, HTSUS. An article classified in subheading 8215.99.5000, HTSUS, must be something other than a spoon or a ladle, such as a butter-knife, sugar tong, or similar kitchen or tableware. Thus, we conclude that the spoons are not classifiable in subheading 8215.99.5000, HTSUS.

Determining which of the remaining subheadings provides for the classification of the spoons requires an examination of the composition of the spoon handles. Spoons with handles of stainless steel are classifiable, depending on their value, in subheadings 8215.99.30 or 8215.99.35, HTSUS.

Spoons with handles of base metal (except stainless steel) or nonmetal are classifiable under subheading 8215.99.40, HTSUS. Spoons with handles consisting of something other than stainless steel, other base metals, or nonmetal, such as precious metal, are classifiable in subheading 8215.99.45, HTSUS. As the handles of the spoons consist of plastic, stainless steel, and rubber, application of GRI 3, applicable at the subheading level through application of GRI 6, is called for.

Before applying GRI 3, classification of the spoons under subheading 8215.99.30, HTSUS, can be disposed of without further consideration. The subheading provides for spoons with stainless steel handles valued under 25 cents each, and the spoons at issue are valued in excess of 25 cents each. This fact eliminates the subheading as a classification

possibility and leaves subheading 8215.99.35, HTSUS, as the only possibility for classifying the spoons as spoons with stainless steel handles. Also, classification in subheading 8215.99.4500, HTSUS, can be disposed of without further consideration by recognition of the fact that this subheading provides for classification of spoons with handles made of materials other than stainless steel, other base metals, or nonmetals. As the handles of the spoons at issue consist of plastic (nonmetal), stainless steel, and rubber (nonmetal), the spoons cannot be classified in subheading 8215.99.4500, HTSUS. This leaves only subheadings 8215.99.35 and 8215.99.40, HTSUS, as classification possibilites.

Under GRI 3(a), in pertinent part, and GRI 6, classification is appropriate in the subheading that provides the most specific description of the article or component under consideration. In this case, the description referred to is the composition of the spoon handles which determines classification of the spoons at the eight-digit level. However, when two or more subheadings each refer to part only of the materials or substances contained in mixed or composite goods, those subheadings are to be regarded as equally specific, and consideration of the article or component for classification purposes will proceed under GRI 3(b). As subheading 8215.99.35, HTSUS, refers to stainless steel handles and subheading 8215.99.40, HTSUS, refers to handles of base metal (except stainless steel) and nonmetal (here, the plastic and rubber), these subheadings are regarded as equally specific, and classification of the spoons will be considered under GRI 3(b).

Under GRI 3(b), as applied to the facts of this case, classification is determined by ascertaining which of the materials of the spoon handles, the plastic, stainless steel, or rubber, imparts to the spoon handle its essential character. Classification in subheading 8215.99.35, HTSUS, will follow if the essential character of the handles is imparted by the stainless steel component. Classification in subheading 8215.99.40, HTSUS, will follow if the essential character of the handles is imparted by the plastic or the rubber component.

Based on the description of the spoons provided by Lifetime Hoan Corporation, we find that the plastic and rubber materials are the primary materials of the spoon handles, as the plastic represents the essentail form and substance of the handle and the rubber provides the important non-slip gripping feature. Thus, we conclude that the essential character of the handles is not imparted by the stainless steel component. As between the plastic and rubber components of the handles, both nonmetal materials, we submit that an essential character determination is not necessary, since classification will be the same under subheading 8215.99.40, HTSUS, regardless of which of these two components is said to impart essential character.

Holding:

NY E86257, dated September 9, 1999, and NY E88103, dated December 20, 1999, are hereby REVOKED.

Based on the foregoing analysis, the spoons with handles of plastic, rubber, and stainless steel are classifiable as spoons, other than tablespoons, with nonmetal handles in subheading 8215.99.4060, HTSUS.

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

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF A FORTIFIED OAT CEREAL PRODUCT

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

ACTION: Notice of revocation of classification ruling letter relating to the tariff classification of a fortified oat cereal product.

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 is revoking a ruling letter pertaining to the tariff classification of a fortified oat cereal product. Customs is also revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed action was published in the CUSTOMS BULLETIN on August 28, 2002. The one comment that was received in response to the notice was in favor of the proposed revocation.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 16, 2002.

FOR FURTHER INFORMATION CONTACT: Bill Conrad, Regulations Branch, (202) 572–8764.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter Title VI) became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on 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 to 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 section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on August 28, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 35, proposing to revoke New York Ruling Letter (NY) H81626, dated May 30, 2001. The one comment that was received during the comment period was in favor of the proposed revocation.

As stated in the proposed notice, the revocation will also cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. This treatment may, among other reasons, be the result of the importer's reliance on a ruling letter issued to a third party, Customs 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 Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In NY H81626, Customs classified a product referred to as a cereal product from Ireland in subheading 1904.90.0040, HTSUS, which provides for prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, cornflakes); cereals (other than corn (maize)) in grain form or in the form of flakes or other worked grains (except flour, groats, and meal), pre-cooked or otherwise prepared, not elsewhere specified or included: Other: Other. Since the issuance of that ruling, Customs has reconsidered the ruling and determined that the fortified oat cereal product is classifiable under subheading 1104.22.0000, HTSUS, as otherwise worked oat cereal grains.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY H81626 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Letter 965522 (see "Attachment"). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

Dated: September 30, 2002.

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 30, 2002.

CLA–2 RR:CR:GC 965522 bc
Category: Classification
Tariff No. 1104.22.0000

JEFFREY S. LEVIN, ESQ.
HARRIS ELLSWORTH & LEVIN
2600 Virginia Ave., N.W., Suite 1113
Washington, DC 20037

Re: McCann's Fortified Oats; NY H81626 revoked.

DEAR MR. LEVIN:

This concerns NY H81626, dated May 30, 2001, issued to All-Ways Forwarding Int'l Inc. (All-Ways Forwarding) on behalf of World Finer Foods by the Director, Customs National Commodity Specialist Division, New York, regarding the classification of a fortified oat cereal product (McCann's) under the Harmonized Tariff Schedule of the United States (HTSUS).

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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), a notice was published on August 28, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 35, proposing to revoke NY H81626. The one comment received during the comment period was in favor of the proposed revocation.

As further explained below, in NY H81626, Customs classified the fortified oat cereal product at issue under subheading 1904.90.0040, HTSUS, as a pre-cooked or otherwise prepared cereal (other than corn) in grain form or in the form of other worked grains. In response to your letter of March 20, 2002, requesting reconsideration of NY H81626, we reviewed that ruling and find it to be inconsistent with the HTSUS requirements for classification of such merchandise. It is now Customs position that the fortified oat cereal product at issue is properly classifiable under subheading 1104.22.0000, HTSUS, as otherwise worked oat cereal grains. For the reasons stated below, this ruling revokes NY H81626.

Facts:

In NY H81626, issued May 30, 2001, Customs described the fortified oat cereal product there classified as follows: "McCann's Fortified Oats is a food product composed of precooked, vitamin-fortified oat groats, packed for retail sale." Based on this description, Customs classified the cereal product under subheading 1904.90.0040, HTSUS, as cereals (other than corn (maize)) in grain form or in the form of flakes or other worked grains (except flour, groats, and meal), pre-cooked or otherwise prepared, not elsewhere specified or included: Other: Other. The classification ruling was issued on May 30, 2001.

In your March 20, 2002, letter, you requested reconsideration of the ruling and contended that the cereal product should be classified under subheading 1104.22.0000, HTSUS,

as cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced, or kibbled), except rice of heading 1006; * * *; Other worked grains (for example, hulled, pearled, sliced, or kibbled): Of oats. You set forth a description of the product and the production process with particular emphasis on the question of whether the product was subject to a pre-cooking process. You contend that the product is not pre-cooked or otherwise prepared.

Issue:

Is McCann's Fortified Oats classified as a pre-cooked or otherwise prepared cereal in grain form under heading 1904, HTSUS, or as an otherwise worked cereal grain of oats under heading 1104, HTSUS?

Law and Analysis:

Classification of goods under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relevant Section or Chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See Treasury Decision 89–80.

The HTSUS provisions under consideration are as follows:

1104	Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced, or kibbled), except rice of heading 1006; germ of cereals, whole, rolled, flaked, or ground:
1904	Prepared foods obtained by the swelling or roasting of cereals or cereal products (for example, cornflakes); cereals (other than corn (maize)) in grain form or in the form of flakes or other worked grains (except flour and meal), pre-cooked or otherwise prepared, not elsewhere specified or included:

The Customs ruling that classified the oat cereal product under heading 1904, HTSUS, was based in significant part on Customs understanding that the product had been pre-cooked during production. A description of the production process submitted by All-Ways Forwarding included two stages where heat was applied to the product. During what is designated the kilning stage, early in the process, the oats are steamed for 10 minutes at 100 degrees Celcius, kilned for 2 hours at 95–105 degrees Celcius, and cooled for 30 minutes at 25 degrees Celcius. This stage of production is designed to toast the oats for flavoring purposes and to inactivate an enzyme present in the oats that can cause rancidity. Later in the process, the oats, which are referred to as cut groats at this stage, are subjected to steam for 10 minutes to bind the vitamin mix to the cut groats and then conditioned for 40 minutes at 100 degrees Celcius. This stage of production also ensures completion of the enzyme deactivation process. In initially classifying the product, Customs believed that this second heating process constituted a pre-cooking process. Essential to this belief was the fact that a relatively short cooking time (6–7 minutes as compared to 20–30 minutes for similar product) is required to prepare the finished product for consumption. Thus, based on the conclusion that pre-cooking was involved, Customs classified the cereal product as "pre-cooked or otherwise prepared" under heading 1904, HTSUS.

In reconsidering this case, Customs has reviewed your arguments, conducted additional research, and consulted an expert in the field of oat processing. As a result, Customs acknowledges that its understanding that the product was pre-cooked, upon which NY H81626 was based, is not accurate. For the reasons set forth below, Customs now understands that the product classified in NY H81626 is not pre-cooked or otherwise prepared.

Regarding pre-cooking, Customs now believes that the reduced cooking time for the finished product at issue is primarily due to three factors. The first is the fact that the product is cut more finely than other products of this kind that require more time for cooking. (Kibbling is a grinding process that produces the finished oat pieces, but they are referred to as cut pieces.) The size of the pieces affects cooking time: the smaller the pieces, the quicker the cooking time. The second is that during the heating and conditioning process

that binds the vitamin mixture to the product, the moisture content of the cut pieces is reduced, resulting in a product that is more absorbent than most similar products. The ability of the oat pieces to absorb water affects cooking time: the more absorbent the pieces, the quicker the cooking time. The third is the fact that the product is cooked by adding it directly to boiling water, resulting in more rapid hydration of the pieces and, again, a shorter cooking time.

Thus, Customs now concludes that while the second heating process involved in production of the product inevitably has some effect on cooking time, it is not a pre-cooking process. Its purpose is to bind the vitamin mixture to the oat pieces, and the shortened cooking time is predominantly the result of other factors.

Regarding the question of whether the product is "otherwise prepared," Chapter Note 4 of Chapter 19, HTSUS, provides that the expression "otherwise prepared" means prepared or processed to an extent beyond that provided for in the headings of or notes to chapter 10 or 11." The relevant preparations and processes of Chapter 11 are hulling, rolling, flaking, pearling, slicing, kibbling, and grinding. As the product at issue has undergone only the processes of hulling and kibbling (along with some other routine, incidental procedures, such as cleaning and sorting), both permitted under Chapter 11, and has not been subject to advanced processes that would constitute preparation beyond that which is permitted under Chapter 11, HTSUS, Customs concludes that the product is not otherwise prepared within the meaning of Chapter 19, HTSUS.

Holding:

NY H81626, dated May 30, 2001, is hereby REVOKED.

Based on the foregoing findings that McCann's Fortified Oats consists of cereal grains of oats that have been hulled and kibbled, as permitted under Chapter 11, HTSUS, but not pre-cooked or otherwise prepared which would require its classification under Chapter 19, HTSUS, such product is classifiable under Chapter 11, HTSUS, specifically in subheading 1104.22.0000, HTSUS, as: Cereal grains otherwise worked (for example, hulled, rolled, flaked, pearled, sliced, or kibbled), except rice of heading 1006; * * *: Other worked grains (for example, hulled, pearled, sliced, or kibbled): Of oats.

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

MARVIN AMERNICK,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)