

# Bureau of Customs and Border Protection

## *CBP Decisions*

**19 CFR PART 12**

**[CBP Dec. 04-08]**

**RIN 1505 - AB50**

### **Import Restrictions Imposed on Archaeological Material Originating in Honduras**

**AGENCY:** Customs and Border Protection, Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs and Border Protection (CBP) Regulations to reflect the imposition of import restrictions on certain archaeological material originating in the Republic of Honduras (Honduras). These restrictions are being imposed pursuant to an agreement between the United States and Honduras that has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The document amends the CBP Regulations by adding Honduras to the list of countries for which an agreement has been entered into for imposing import restrictions. The document also contains the Designated List of Pre-Colombian Archaeological Material from Honduras that describes the types of articles to which the restrictions apply.

**EFFECTIVE DATE:** March 16, 2004.

**FOR FURTHER INFORMATION CONTACT:** (Legal Aspects) Joseph Howard, Intellectual Property Rights Branch (202) 572-8701; (Operational Aspects) Michael Craig, Trade Compliance and Facilitation (202) 927-0370.

**SUPPLEMENTARY INFORMATION:****Background**

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The United States shares in the international concern for the need to protect endangered cultural property. The appearance in the United States of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Congress. It became apparent that it was in the national interest for the United States to join with other countries to control illegal trafficking of such articles in international commerce.

The United States joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub. L. 97-446, 19 U.S.C. 2601 *et seq.*) ("the Act"). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance to the nations from where they originate and contribute to greater international understanding of mankind's common heritage.

During the past several years, import restrictions have been imposed on archaeological and ethnological artifacts/materials of a number of signatory nations. These restrictions have been imposed as a result of requests for protection received from those nations, as well as pursuant to bilateral agreements between the United States and other countries. More information on import restrictions can be found on the International Cultural Property Protection web site (<http://exchanges.state.gov/education/culprop>).

Import restrictions are now being imposed on certain archaeological materials from the Republic of Honduras (Honduras).

**Determinations**

Under 19 U.S.C. 2602(a)(1), the United States must make certain determinations before entering into an agreement to impose import restrictions under 19 U.S.C. 2602(a)(2). On July 28, 2003, the Assis-

tant Secretary of State for Educational and Cultural Affairs, made the determinations required under the statute with respect to certain archaeological materials originating in Honduras that are described in the designated list set forth further below in this document, including the following: (1) that the unique cultural patrimony of Honduras is in jeopardy from the pillage of these archaeological materials; (2) that Honduras has taken measures consistent with the Convention to protect its cultural patrimony; (3) that import restrictions imposed by the United States would be of substantial benefit in deterring a serious situation of pillage and remedies less drastic are not available; and (4) that the application of import restrictions is consistent with the general interests of the international community in the interchange of the designated archaeological materials among nations for scientific, cultural, and educational purposes.

#### The Agreement

On March 12, 2004, the United States and Honduras entered into a bilateral agreement (the Agreement) pursuant to the provisions of 19 U.S.C. 2602(a)(2) covering certain archaeological materials representing its pre-Colombian cultural heritage. Dating from approximately 1200 B.C. to approximately 1500 A.D., these materials include, but are not limited to, objects of ceramic, metal, stone, shell, and animal bone representing, among others, the Maya, Chorti Maya, Lenca, Jicaque, and Pipil cultures.

#### Restrictions and Amendment to the Regulations

In accordance with the Agreement, import restrictions are now being imposed on these archaeological materials from Honduras. Importation of these materials, described in the designated list below, are subject to the restrictions of 19 U.S.C. 2606 and § 12.104g(a) of the Customs and Border Protection (CBP) Regulations (19 CFR 12.104g(a)) and will be restricted from entry into the United States unless the conditions set forth in 19 U.S.C. 2606 and § 12.104c of the regulations (19 CFR 12.104c) are met. CBP is amending § 12.104g(a) of the CBP Regulations (19 CFR 12.104g(a)) to indicate that these import restrictions have been imposed.

#### **Material Encompassed in Import Restrictions**

The bilateral agreement between Honduras and the United States covers the categories of artifacts described in a Designated List of Pre-Colombian Archaeological Material from Honduras, which is reproduced and set forth below. (Regarding parenthetical references to authors in the list below, see bibliography immediately after the list.)

## **Designated List of Pre-Colombian Archaeological Material from Honduras**

### I. Ceramic

Materials made from ceramic (e.g., terracotta/fired clay) include a full range of surface treatments and appendages on various shapes of vessels, lids, figurines, and other ceramic objects (e.g., tools). Decorative techniques used on these materials include, but are not limited to, fluting, dentate-stamping, incised designs, modeled sculpting, polishing/burning, differentially fired areas, and polychrome, bichrome and/or monochrome designs of human and animal figures, mythological scenes and/or geometric motifs. Vessels and figurines may include sculpted and/or applique appendages, such as handles, knobs, faces, fillets, and tripod, quadruped, or ring supports.

Examples include, but are not limited to, polychromes (e.g., Copador, Ixcanrio, Gualpopa, Ejar, Cancique and other Copan styles, Ulua-Yojoa (e.g., Red, Maroon, Black, and Tenampua groups), Chichicaste, Filopo, Las Flores, Sulaco, Chamelecon, Naco, and Bay Island), incised and punctuated designs (e.g., Selin, Gualijoquito, and Escondido groups), Usulután styles, Mammiform vessels, monochromes (e.g., Cuymal, Limon, Higuierito, Talgua), incense burners (Coner ceramics), Yaba-ding-ding, Playa de los Muertos, Olmec style, and Formative period pottery. Ceramics may also have post-fire pigment and/or stucco.

For reference, please consult the following: See chapters in Henderson and Beaudry-Corbett 1993; Baudez 1983; Baudez and Bequelin 1973; Beaudry 1984; Canby 1949, 1951; Fash 1991; Glass 1966; Gordon 1898; Healy 1984; Henderson 1997; Henderson et al 1979; Hirth, Kennedy, and Cliff 1989; Joyce 1985, 1987, 1991, 1993a, 1993b; Joyce and Henderson 2001; Longyear 1952; Robinson 1978; see papers in Robinson 1987; Stone 1957, 1941; Strong 1935; Strong, Kidder, and Paul 1938; Urban and Schortman 1988; Veil 1978, 1983, 1993; Willey 1988; Willey et al. 1994; Wonderley 1987; Yde 1938.

#### A. Ceremonial Vessels

1. Cylinders
2. Bowls
3. Dishes and plates
4. Jars

#### B. Common Vessels

1. Cylindrical vessels
2. Bowls
3. Dishes and plates
4. Jars

### C. Special Forms

1. Drums—polychrome painted and plain
2. Figurines—human and animal forms
3. Whistles—human and animal forms
4. Rattles—human and animal forms
5. Miniature vessels
6. Stamps and seals—engraved geometric designs, various sizes and shapes
7. Effigy vessels—in human or animal form
8. Incense burners—elaborate painted, applied and modeled decoration in form of human figures
9. Architectural elements

### II. Stone/Stucco (marble, jade, obsidian, flint, alabaster/calcite, limestone, slate, and other, including stucco materials)

The range of stone materials includes, but is not limited to, sculpture, vessels, figurines, masks, jewelry, stelae, tools, and weapons.

For reference, please consult the following: Baudez 1983, 1994; Digby 1972; Doonan 1996; Garber et al. 1993; Gordon 1898, 1920, 1921; Hirth 1988; Hirth and Hirth 1993; Joyce and Henderson 2001; Henderson 1992, 1997; Luke 2002; Luke et al. 2003; Stone 1938, 1941, 1957, 1972, 1977; Strong, Kidder and Paul 1938.

- A. Figurines—human and animal
- B. Masks—incised decoration and inlaid with shell, human and animal faces
- C. Jewelry—various shapes and sizes
  1. Pendants
  2. Ear spools
  3. Necklaces
  4. Pectoral
- D. Stelae, Ritual Objects, Architectural Elements, Petroglyphs—Carved in low relief with scenes of war, ritual, or political events, portraits of rulers or nobles, often inscribed with glyphic texts. Sometimes covered with stucco and painted. The size of stelae and architectural elements, such as lintels, posts, steps, and decorative building blocks, range from .5 meters to 2.5 meters in height; hachas, yokes, and other carved ritual objects are under 1 meter in length or height but vary in size.
- E. Tools and Weapons
  1. Arrowheads
  2. Axes, adzes, celts
  3. Blades
  4. Chisels
  5. Spearpoints
  6. Eccentric shapes
  7. Grinding stones (manos and metates)
  8. Maceheads

#### F. Vessels and Containers

1. Bowls
2. Plates/Dishes
3. Vases

### III. Metal (gold, silver, or other)

These objects are cast or beaten into the desired form, decorated with engraving, inlay, punctured design, or attachments. Often in human or stylized animal forms (for examples, consult: Healy 1984; Stone 1941, 1957, 1972, 1977).

#### A. Jewelry—various shapes and sizes

1. Necklaces
2. Bracelets
3. Disks
4. Ear spools
5. Pendants
6. Pectorals

#### B. Figurines

#### C. Masks

#### D. Disks

#### E. Axes

#### F. Bells

### IV. Shell

These objects are worked and un-worked and include, but are not limited to, conch, snail, spiny oyster, sting-ray, and sea urchin spines. Shell may be decorated with cinnabar and incised lines, sometimes with inlaid jade (for examples, consult: Baudez 1983; Fash 1991).

#### A. Figurines—human and animal

#### B. Jewelry—various shapes and sizes

1. Necklaces
2. Bracelets
3. Disks
4. Ear spools
5. Pendants

C. Natural Forms—often with incised designs, various shapes and sizes

### V. Bone

These objects are carved or incised with geometric and animal designs and glyphs (for examples, consult: Baudez 1983; Coggins 1988; Fash 1991).

#### A. Tools—various sizes

1. Needles
2. Scrapers

B. Jewelry—various shapes and sizes

1. Pendants
2. Beads
3. Ear Spools

### Bibliography

- Baudez, Claude F. (ed.) 1983 *Introducción a la Arqueología de Copan*, 3 vol-umes. Secretaria de Estado en el Despacho de Cultura y Turismo, Tegucigalpa, Honduras.
- 1994 *Maya Sculpture of Copan: The Iconography*. University of Oklahoma Press, Norman, OK.
- Baudez, Claude F. and Pierre Becquelin 1973 *Archéologie de los Naranjos, Honduras*. Etudes Mésoaméricaines 2. Mission Archéologique et Ethnologique Française au Mexique, Mexico City, Mexico.
- Beaudry, Marilyn P. 1984 *Ceramic Production and Distribution in the South-eastern Maya Periphery: Late Classic Painted Serving Vessels*. BAR International Series 203. British Archaeological Reports, Oxford, UK.
- Canby, Joel S. 1951 Possible Chronological Implications of the Long Ceramic Sequence Recovered at Yarumela, Spanish Honduras. In *Proceedings of the Twentieth International Congress of Americanists*, vol. I, pp. 79–85. University of Chicago Press, Chicago, IL.
- 1949 *Excavations at Yarumela, Spanish Honduras*. Doctoral dissertation, Department of Anthropology, Harvard University, Cambridge, MA.
- Coggins, Clemency 1988 On the Historical Significance of Decorated Ceramics at Copán and Quiriguá and Related Classic Maya Sites. In *Southeast Classic Maya Zone*, E. H. Boone and G. R. Willey (eds.), pp. 95–123. Smithsonian Institution Press, Washington, DC.
- Digby, Adrian 1972 *Maya Jades*. British Museum, London, UK.
- Doonan, William F. 1996 *The Artifacts of Group 10L2, Copán, Honduras: Variation in Material Culture and Behavior in a Royal Residential Compound*. Doctoral dissertation, Department of Anthropology, Tulane University, New Orleans, LA.
- Fash, William L., Jr. 1991 *Scribes, Warriors and Kings: The City of Copán and the Ancient Maya*. Thames and Hudson, London, UK.
- Glass, John B. 1966 Archaeological Survey of Western Honduras. In *Handbook of Middle American Indians, Vol. 4*, Robert Wauchope, Gordon F. Ekholm, and Gordon R. Willey (eds.), pp. 157–79. University of Texas Press, Austin, TX.
- Garber, James F., David C. Grove, Kenneth G. Hirth, and John W. Hoopes 1993 Jade Use in Portions of Mexico and Central America. In *Precolumbian Jade*, F. Lange (ed.), pp. 211–31. University of Utah Press, Salt Lake City, UT.
- Gordon, G. B. 1921 The Ulúa Marble Vases. *The Museum Journal* 12: 53–74.

1920 A Marble Vase from the Ulúa River, Honduras. *Art and Archaeology* 9: 141–45.

1898 *Researches in the Uloa Valley, Honduras*. Peabody Museum Memoirs 1(4). Harvard University, Cambridge, MA.

Healy, Paul 1984 The Archaeology of Honduras. In *The Archaeology of Lower Central America*, F. W. Lange and D. Z. Stone (eds.), pp. 113–64. University of New Mexico Press, Albuquerque, NM.

Henderson, John S. 1997 *World of the Ancient Maya*, 2<sup>nd</sup> ed. Cornell University Press, Ithaca, NY.

1992 Elites and Ethnicity along the Southeastern Fringe of Mesoamerica. In *Mesoamerican Elites: An Archaeological Assessment*, D. Z. Chase and A. F. Chase (eds.), pp. 155–68. University of Oklahoma Press, Norman, OK.

Henderson, John S. and Marilyn Beaudry Corbett (eds.) 1993 *Pottery of Prehistoric Honduras*. Institute of Archaeology, Monograph 35. University of California, Los Angeles, CA.

Henderson, John S., Irene Sterns, Anthony Wonderley, and Patricia A. Urban 1979 Archaeological Investigations in the Valle de Naco, Northwestern Honduras: A Preliminary Report. *Journal of Field Archaeology* 6: 169–92.

Hirth, K., N. Kennedy, and Cliff 1989 Chronology and Ceramic Variability within the El Cajón Region. In *Archaeological Research in the el Cajón Region*. Vol. 1: *Prehistoric Cultural Ecology*, K. Hirth, G. Lara Pinto, and G. Haseman (eds.). Memoirs in Latin American Archaeology 1. University of Pittsburgh, Pittsburgh, PA.

1988 The Central Honduras Corridor. In *The Southeast Classic Maya Zone*, E. H. Boone and G. R. Willey (eds.), pp. 297–334. Dumbarton Oaks, Washington, DC.

Hirth, Kenneth G. and Susan Grant Hirth 1993 Ancient Currency: The Style and Use of Jade and Marble Carvings in Central Honduras. In *Precolumbian Jade*, F. W. Lange (ed.), pp. 173–90. University of Utah Press, Salt Lake City, UT.

Joyce, Rosemary A. 1993a Appendix A: A Key to Ulúa Polychromes. In *Pottery of Prehistoric Honduras*, John S. Henderson and Marilyn Beaudry Corbett (eds.), pp. 257–79. Institute of Archaeology University of California, Los Angeles, Monograph 35.

1993b The Construction of the Mesoamerican Frontier and the Mayoid Image of Honduran Polychromes. In *Reinterpreting Prehistory of Central America*, Mark Miller Graham (ed.), pp. 51–101. University Press of Colorado, Niwot, CO.

1991 *Cerro Palenque: Power and Identity on the Maya Periphery*. University of Texas Press, Austin, TX.

1987 Intraregional Ceramic Variation and Social Class: Developmental Trajectories of Classic Period Ceramic Complexes from the Ulúa Valley. In *Interaction on the Southeast Mesoamerican Frontier: Prehistoric and Historic*



- Honduras and El Salvador*. Eugenia J. Robinson (ed.). BAR International Series 327 (ii): 280–303. British Archaeological Reports, Oxford, UK.
- 1985 *Cerro Palenque, Valle de Ulúa Honduras: Terminal Classic Interaction on the Mesoamerican Periphery*. Doctoral dissertation, Department of Anthropology, University of Illinois, Urbana, IL.
- Joyce, Rosemary A. and John S. Henderson 2001 Beginnings of Village Life in Eastern Mesoamerica. *Latin American Antiquity* 12 (1): 523.
- Longyear, John M., III 1952 *Copán Ceramics: A Study of Southeastern Maya Pottery*. Publication No. 597. Carnegie Institution of Washington, Washington, DC.
- Luke, Christina 2002 *Ulúa Marble Vases*. Doctoral dissertation, Department of Anthropology, Cornell University, Ithaca, NY.
- Luke, Christina, Rosemary A. Joyce, John S. Henderson and Robert H. Tykot 2003 Marble Carving Traditions in Honduras: Formative through Terminal Classic. In *ASMOSIA 6, Interdisciplinary Studies on Ancient Stone—Proceedings of the Sixth International Conference of the Association for the Study of Marble and Other Stones in Antiquity, Venice, June 15–18, 2000*, L. Lazzarini (ed.), pp. 485–96. Bottega d’Erasmus, Padova, Italy.
- Robinson, Eugenia J. 1987 (ed.) *Interaction on the Southeast Mesoamerican Frontier: Prehistoric and Historic Honduras and El Salvador*. BAR International Series 327. British Archaeological Reports, Oxford, UK.
- 1978 *Maya Design Features of Mayoid Vessels of the UluaYojoa Polchromes*. MA thesis, Department of Anthropology, Tulane University, New Orleans, LA.
- Stone, Doris Z. 1977 *Pre-Columbian Man in Costa Rica*. Peabody Museum Press, Harvard University, Cambridge, MA.
- 1972 *Pre-Columbian Man Finds Central America*. Peabody Museum Press, Harvard University, Cambridge, MA.
- 1957 *The Archaeology of Central and Southern Honduras*. Papers of the Peabody Museum of Archaeology and Ethnology 29 (3). Harvard University, Cambridge, MA.
- 1941 *Archaeology of the North Coast of Honduras*. *Peabody Museum Memoirs* 9(I). Harvard University, Cambridge, MA.
- 1938 *Masters in Marble*. Middle American Research Series, Pub. 8, Pt.1. Tulane University, New Orleans, LA.
- Strong, Duncan. 1935 *Archaeological Investigations in the Bay Islands, Spanish Honduras*. Smithsonian Miscellaneous Collection, Vol. 92, No. 14. Smithsonian Institution, Washington, DC.
- Strong, William Duncan, Alfred Kidder III, and A.J. Drexel Paul 1938 *Preliminary Report on the Smithsonian Institution Harvard University Archaeological Expedition to Northwestern Honduras*. Smithsonian Miscellaneous Collections Vol. 97, No. 1. Smithsonian Institution, Washington, DC.

Urban, Patricia A. and Edward M. Schortman 1988 The Southeast Zone Viewed from the East: Lower MotaguaNaco Valleys. In *The Southeast Classic Maya Zone*, Elizabeth H. Boone and Gordon R. Willey (eds.), pp. 223–68. Dumbarton Oaks, Washington, DC.

Viel, René 1993 *Evolución de la cerámica de Copán, Honduras*. Instituto Hondureño de Antropología e Historia, Tegucigalpa, Honduras.

1983 Evolución de la cerámica e Copán: Resultados preliminares. In *Introducción a la Arqueología de Copán, Honduras*, Vol. I, Claude Baudez (ed.), pp. 473–549. SECTUR, Tegucigalpa, Honduras.

1978 *Etude de la céramique Ulúa Yojoa Polychrome (NordOuest de Honduras): Essai d'analyse stylistique du Babilonia*. Doctoral dissertation, Université René Descartes, Paris, France.

Willey, G. 1988 The Southeast Classic Maya Zone: A Summary. In *The Southeast Classic Maya Zone*, E. H. Boone and G. R. Willey (eds.), pp. 395–408. Dumbarton Oaks, Washington, DC.

Willey, G., R. M. Levanthal, A. Demarest, and W. L. Fash, Jr. 1994 *Ceramics and Artifacts from Excavations in the Copan Residential Zone*. Papers of the Peabody Museum of Archaeology and Ethnology, Vol. 80. Harvard University, Cambridge, MA.

Wonderley, Anthony 1987 Imagery in Household Pottery from “La Gran Provincia de Naco”. In *Interaction on the Southeast Mesoamerican Frontier: Prehistoric and Historic Honduras and El Salvador*, Eugenia J. Robinson (ed.). BAR International Series 327 (ii):304–326. British Archaeological Reports, Oxford, UK.

Yde, Jens 1938 *An Archaeological Reconnaissance of Northwestern Honduras: A Report of the Work of the Tulane University Danish National Museum Expedition to Central America 1935*. Levin and Munksgaard, Copenhagen, Denmark.

### **CBP Decision 03–24: Delegations of Authority**

This amendment to the regulations is being issued in accordance with § 0.2(a) of the CBP Regulations (19 CFR 0.2(a)) pertaining to the authority of the Secretary of Homeland Security to sign regulations relative to customs non-revenue functions transferred to the Department of Homeland Security under section 403(1) of the Homeland Security Act of 2002 (see CBP Dec. 03–24; 68 FR 51868).

### **Inapplicability of Notice and Delayed Effective Date**

Because the amendment to the CBP Regulations contained in this document imposing import restrictions on the above-listed cultural property of Honduras is being made in response to a bilateral agreement entered into in furtherance of the foreign affairs interests of the United States, pursuant to section 553(a)(1) of the Administra-

tive Procedure Act, (5 U.S.C. 553(a)(1)), no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(3).

### **Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

### **Executive Order 12866**

This amendment does not meet the criteria of a “significant regulatory action” as described in E.O. 12866.

### **Drafting Information**

The principal author of this document was Bill Conrad, Regulations Branch, Office of Regulations and Rulings, U.S. Customs and Border Protection. However, personnel from other offices participated in its development.

### **List of Subjects in 19 CFR Part 12**

Customs duties and inspections, Imports, Cultural property.

### **Amendment to the Regulations**

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

#### **PART 12—SPECIAL CLASSES OF MERCHANDISE**

1. The general authority and specific authority citations for Part 12, in part, continue to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

\* \* \* \* \*

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

\* \* \* \* \*

2. In § 12.104g, paragraph (a), containing the list of agreements imposing import restrictions on described articles of cultural property of State Parties, is amended by adding Honduras to the list in appropriate alphabetical order as follows:

**§ 12.104(g) Specific items or categories designated by agreements or emergency actions.**

(a) \* \* \*

State	Cultural Property	Decision No.
* * * *	* *	*
Honduras . . . . .	Archaeological Material of Pre-Colombian cultures ranging approximately from 1200 B.C. to 1500 A.D.	CBP Dec. 04-08
* * * *	* *	*

\* \* \* \* \*

ROBERT C. BONNER,  
*Commissioner,*  
*Customs and Border Protection.*

Approved: March 12, 2004

TIMOTHY E. SKUD,  
*Deputy Assistant Secretary*  
*of the Treasury.*

[Published in the Federal Register, March 16, 2004 (69 FR 12267)]

—◆—  
*General Notices*

**AGENCY INFORMATION COLLECTION ACTIVITIES:  
DRAWBACK PROCESS REGULATIONS**

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

**ACTION:** Proposed collection; comments requested.

---

**SUMMARY:** The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Drawback Process Regulations. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is pub-

lished to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 70283) on December 17, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

**DATES:** Written comments should be received on or before April 15, 2004.

**ADDRESSES:** Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, D.C. 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Title:** Drawback Process Regulations

**OMB Number:** 1651-0075

**Form Number:** Forms CBP-7551, 7552, 7553,

**Abstract:** The information is to be used by CBP officers to expedite the filing and processing of drawback claims, while maintaining necessary enforcement information to maintain effective administrative oversight over the drawback program.

**Current Actions:** This submission is being submitted to extend the expiration date with no change to the burden hours.

**Type of Review:** Extension (without change)

**Affected Public:** Businesses, Institutions

**Estimated Number of Respondents:** 8,150

**Estimated Time Per Respondent:** 11 hours

**Estimated Total Annual Burden Hours:** 90,000

**Estimated Total Annualized Cost on the Public:**  
\$3,098,405.86

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-927-1429.

Dated: March 9, 2004

TRACEY DENNING,  
*Agency Clearance Officer,  
Information Services Branch.*

[Published in the Federal Register, March 16, 2004 (69 FR 12342)]

---

### **DATES AND DRAFT AGENDA OF THE THIRTY-THIRD SESSION OF THE HARMONIZED SYSTEM COMMITTEE OF THE WORLD CUSTOMS ORGANIZATION**

**AGENCIES:** U.S. Customs and Border Protection, Department of Homeland Security, and U.S. International Trade Commission.

**ACTION:** Publication of the dates and draft agenda for the thirty-third session of the Harmonized System Committee of the World Customs Organization.

**SUMMARY:** This notice sets forth the dates and draft agenda for the next session of the Harmonized System Committee of the World Customs Organization.

**DATE:** March 17, 2004.

**FOR FURTHER INFORMATION CONTACT:** Myles B. Harmon, Director, Commercial Rulings Division, U.S. Customs and Border Protection (202-572-8860), or Eugene A. Rosengarden, Director, Office of Tariff Affairs and Trade Agreements, U.S. International Trade Commission (202-205-2592).

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

The United States is a contracting party to the International Convention on the Harmonized Commodity Description and Coding System (“Harmonized System Convention”). The Harmonized Commodity Description and Coding System (“Harmonized System”), an international nomenclature system, forms the core of the U.S. tariff, the Harmonized Tariff Schedule of the United States. The Harmonized System Convention is under the jurisdiction of the World Customs Organization (established as the Customs Cooperation Council).

Article 6 of the Harmonized System Convention establishes a Harmonized System Committee (“HSC”). The HSC is composed of representatives from each of the contracting parties to the Harmonized System Convention. The HSC’s responsibilities include issuing classification decisions on the interpretation of the Harmonized System. Those decisions may take the form of published tariff classification opinions concerning the classification of an article under the Harmonized System or amendments to the Explanatory Notes to the Harmonized System. The HSC also considers amendments to the legal text of the Harmonized System. The HSC meets twice a year in Brussels, Belgium. The next session of the HSC will be the thirty-third, and it will be held from May 6–19, 2004.

In accordance with section 1210 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418), the Department of Homeland Security, represented by U.S. Customs and Border Protection, the Department of Commerce, represented by the Census Bureau, and the U.S. International Trade Commission (“ITC”), jointly represent the U.S. government at the sessions of the HSC. The Customs and Border Protection representative serves as the head of the delegation at the sessions of the HSC.

Set forth below is the draft agenda for the next session of the HSC. Copies of available agenda-item documents may be obtained from either Customs and Border Protection or the ITC. Comments on agenda items may be directed to the above-listed individuals.

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

Attachment



WORLD CUSTOMS ORGANIZATION  
 ORGANISATION MONDIALE DES DOUANES  
 Established in 1952 as the Customs Co-operation Council  
 Créée en 1952 sous le nom de Conseil de coopération douanière

HARMONIZED SYSTEM  
 COMMITTEE  
 -  
 33<sup>rd</sup> Session  
 -

NC0798E1

O. Eng.

Brussels, 11 March 2004.

DRAFT AGENDA FOR THE 33<sup>rd</sup> SESSION  
 OF THE HARMONIZED SYSTEM COMMITTEE

From : Thursday, 6 May 2004 (11.00 a.m.)  
To : Wednesday, 19 May 2004

**N.B.** : Tuesday, 4 May 2004 (10.00 a.m.) to Wednesday, 5 May 2004 : Presessional Working Party (to examine the questions under Agenda Item VI)

Thursday, 6 May 2004 (9.30 a.m. – 10.30 a.m.) : Adoption of the Report of the 29<sup>th</sup> Session of the Review Sub-Committee

I. ADOPTION OF THE AGENDA

- 1. Draft Agenda ..... NC0798E1
- 2. Draft Timetable ..... NC0799B1

II. REPORT BY THE SECRETARIAT

- 1. Position regarding Contracting Parties to the HS Convention and related matters ..... **NC0800E1**
- 2. Report on the last meeting of the Policy Commission (50<sup>th</sup> Session) ..... **NC0801E1**
- 3. Approval of decisions taken by the Harmonized System Committee at its 32<sup>nd</sup> Session ..... NG0088E1  
 NC0802E1
- 4. Capacity building activities of the Nomenclature and Classification Sub-Directorate ..... **NC0803E1**
- 5. Co-operation with other international organisations ..... **NC0804E1**
- 6. New information provided on the WCO Web site ..... **NC0805E1**



NC0798E1

- |   |   |  |
|---|---|--|
| 7.  | Annual survey to determine the percentage of national revenue represented by Customs duties .....   | <b>NC0806E1</b>  |
| 8.  | Survey on Free Trade Agreements .....   | <b>NC0807E1</b>  |
| 9.  | Corrections to amendments of the Explanatory Notes adopted by the Committee at its 32 <sup>nd</sup> Session .....   | <b>NC0808E1</b>  |
| 10.   | Other .....   |  |
| <br>  |   |  |
| III. <u>GENERAL</u>                                 |   |  |
| 1.  | Speeding up the HS Committee decision-making process .....  | <b>NC0809E1</b>  |
| 2.  | Streamlining the HS reservation procedures .....  | <b>NC0810E1</b>  |
| 3.  | Increasing participation by the developing world with regard to HS activities .....   | <b>NC0811E1</b>  |
| <br>  |   |  |
| IV. <u>REPORT OF THE SCIENTIFIC SUB-COMMITTEE</u>   |   |  |
| 1.  | Report of the 19 <sup>th</sup> Session of the Scientific Sub-Committee .....  | NS0092E2<br>(SSC/19)   |
| 2.  | Matters for decision .....  | <b>NC0812E1</b>  |
| <br>  |   |  |
| V. <u>REPORT OF THE REVIEW SUB-COMMITTEE</u>        |   |  |
| 1.  | Report of the 29 <sup>th</sup> Session of the Review Sub-Committee .....  | NR0506E3<br>(RSC/29)   |
| 2.  | Matters for decision .....  | <b>NC0813E1</b>  |
| 3.  | Possible amendment of the Explanatory Note to heading 84.43 (HS 2007) .....   | <b>NC0835E1</b>  |
| <br>  |   |  |
| VI. <u>REPORT OF THE PRESESSIONAL WORKING PARTY</u> |   |  |
| 1.  | Amendments to the Compendium of Classification Opinions arising from the classification of concentrated milk with added sugar in subheading 0402.99 ..... | NC0796E2,<br>Annex F/1<br>(HSC/32)<br><b>NC0814E1,</b><br><b>Annex A</b> |
| 2.  | Possible amendment of heading 09.06 (Proposal by the Sri Lanka Administration ) .....   | NC0796E2,<br>Annex G/8<br>(HSC/32)<br><b>NC0814E1,</b><br><b>Annex B</b> |

2.

NC0798E1

- |    |   |  |
|----|---|--|
| 3. | Amendments to the Compendium of Classification Opinions arising from the classification of sugar cubes containing caramel in subheading 1701.91 .....   | NC0796E2,<br>Annex F/8<br>(HSC/32)<br><b>NC0814E1,</b><br><b>Annex C</b> |
| 4. | Amendments to the Compendium of Classification Opinions arising from the classification of whipped cream in spray form in subheading 1901.90 .....  | NC0796E2,<br>Annex G/1<br>(HSC/32)<br><b>NC0814E1,</b><br><b>Annex D</b> |
| 5. | Amendments to the Compendium of Classification Opinions arising from the classification of the "Palm V" presented as a set with cradle and installation software by application of GIR 3 (b) .. | NC0796E2,<br>Annex F/2<br>(HSC/32)<br><b>NC0814E1,</b><br><b>Annex E</b> |
| 6. | Amendments to the Compendium of Classification Opinions arising from the classification of the "PS2" in subheading 9504.10 .....  | NC0796E2,<br>Annex F/5<br>(HSC/32)<br><b>NC0814E1,</b><br><b>Annex F</b> |

VII. FURTHER STUDIES

- |    |   |   |
|----|---|---|
| 1. | Study of the phrase "unless the context otherwise requires" as used in GIR 6 .....        | NS0092E2,<br>Annex A/9<br>(SSC/19)  |
| 2. | Study on a possible transfer of goods resulting from the amendment of heading 09.06 ..... | NC0796E2,<br>Annex G/8<br>(HSC/32)<br><b>NC0815E1</b>                     |
| 3. | Classification of mixtures of fats and oils of heading 15.16 and 15.17 .....              | NC0796E2,<br>Annex H/3<br>(HSC/32)<br>NS0092E2,<br>Annex A/12<br>(SSC/19) |

NC0798E1

- |     |   |  |
|-----|---|--|
| 4.  | Possible amendments to the Nomenclature with respect to certain categories of waste (Proposal by the Basel Convention Secretariat) .....  | NC0796E2,<br>Annex G/7<br>(HSC/32)<br>NS0092E2,<br>Annex A/11<br>(SSC/19)<br><b>NC0816E1</b> |
| 5.  | Classification of natural sodium sulphate .....   | NS0092E2,<br>Annex A/4<br>(SSC/19)   |
| 6.  | Classification of a product by the name "YTRIA C" .....   | NS0092E2,<br>Annex A/10<br>(SSC/19)  |
| 7.  | Classification of certain flooring panels and study on the word "parquet" in the Nomenclature .....   | NC0796E2,<br>Annex G/9<br>(HSC/32)<br><b>NC0817E1</b>  |
| 8.  | Possible amendment of the Explanatory Notes with regard to padded waistcoats .....  | NC0796E2,<br>Annex F/14<br>(HSC/32)<br><b>NC0818E1</b>                                       |
| 9.  | Possible amendments of the Explanatory Notes arising from the classification of the "Palm V" presented as a set with cradle and installation software by application of GIR 3 (b) ..... | NC0796E2,<br>Annex F/2<br>(HSC/32)<br><b>NC0819E1</b>  |
| 10. | Possible alignment of the Explanatory Note to heading 84.42 .....   | <b>NC0820E1</b>  |
| 11. | Classification of parts of safety seat belts .....  | NC0796E2,<br>Annex F/19<br>(HSC/32)<br><b>NC0821E1</b>                                       |
| 12. | Possible amendment of the legal text and Explanatory Note to 90.21 .....  | NC0796E2,<br>Annex F/16<br>(HSC/32)<br><b>NC0822E1</b>                                       |

4.

NC0798E1

- 13. Study aimed at determining whether or not there is a contradiction between the legal texts and exclusion (b) of the Explanatory Note to heading 95.04 (page 1917), arising from the classification of the "PS2" ..... NC0796E2, Annex F/5 (HSC/32) **NC0823E1**

VIII. NEW QUESTIONS

- 1. Possible amendment of the Explanatory Note to heading 26.21 (Proposal by the Canadian Administration ) ..... NC0781E1 (HSC/32)
- 2. Possible amendment of the Explanatory Note to headings 25.20 and 34.07 (Proposal by the EC) ..... NC0788E1 (HSC/32)
- 3. Classification of set top boxes (request from WTO) ..... **NC0824E1**
- 4. Possible amendment of the Explanatory Note to heading 40.08 (Proposal by the Canadian Administration) ..... **NC0826E1**
- 5. Classification of new INN products (INN list 89) ..... **NC0827E1**
- 6. Possible amendment of heading 10.06 (Proposal by the Thai Administration) ..... **NC0828E1**
- 7. Possible amendment of the Explanatory Note to heading 71.02 (Proposal by the Kimberley Process) ..... **NC0829E1**
- 8. Classification of Polymeric PTC Thermistor Devices ..... **NC0830E1**
- 9. Classification of a handbag made of plastic-coated leather ..... **NC0831E1**
- 10. Possible amendments of the Explanatory Notes and alignments of legal texts (Proposal by the EC) ..... **NC0832E1**
- 11. Classification of a mixture of derivatives of vitamins ..... **NC0833E1**
- 12. Possible amendment of the Explanatory Note to heading 28.23 (Proposal by the EC) ..... **NC0834E1**

IX. HS ARTICLE 16 RECOMMENDATION ..... **NC0825E1**

X. OTHER BUSINESS

- 1. List of questions which might be examined at a future session ...

XI. ELECTIONS

XII. DATES OF NEXT SESSIONS

-----

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

*Washington, DC, March 17, 2004,*

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

SANDRA L. BELL,  
*Acting Assistant Commissioner,  
Office of Regulations and Rulings.*

---

**MODIFICATION OF ONE RULING LETTER AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF CERTAIN KNIT CAMISOLES**

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

**ACTION:** Notice of modification of one tariff classification ruling letter and revocation of treatment relating to the classification of certain knit camisoles.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) is modifying one ruling letter relating to the tariff classification of certain knit camisoles under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on January 7, 2004, in Volume 38, Number 2, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

**DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Kelly Herman, Textiles Branch: (202) 572-8713.

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, notice proposing to modify New York Ruling Letter (NY) J81984, dated April 3, 2003, and to revoke any treatment accorded to substantially identical merchandise was published in the January 7, 2004, CUSTOMS BULLETIN, Volume 38, Number 2. No comments were received.

In NY J81984, CBP ruled a tank-styled camisole constructed of fine rib knit 100% cotton fabric (Style 276840) and a camisole with ¼” spaghetti shoulder straps constructed with a fine rib knit 100% cotton fabric (Style 176440) were classifiable in subheading 6109.10.0060, HTSUSA, which provides for “tank tops . . . knitted or crocheted: Of cotton: women’s.” A woman’s top constructed from 84% polyester, 16% spandex knit fabric (Style J56530) was classified in subheading 6114.30.1020, HTSUS. However, Style J56530 is not a subject of this modification. Since the issuance of that ruling, CBP has received from the importer additional information not presented at the time of the ruling request regarding how the garments are purchased, sold, used and known. Accordingly, we have reviewed the classification of these items and have determined that the cited ruling is in error as it pertains to certain knit camisoles. We have determined that the physical features of the garments, the design of the garments, the exclusive environment of sale to the underwear department of retailers, the sale of some of the garments with matching underwear, the garments recognition in the trade as underwear

and the ultimate purchaser's expectations causes them not to be specifically described as tank tops. Rather, they are classified in subheading 6109.10.0037, HTSUSA, which provides for women's or girls' knit underwear. Accordingly, the articles are properly classified in subheading 6109.10.0037, HTSUSA, the provision for "T-shirts, singlets, tank tops, and similar garments, knitted or crocheted: Of cotton, Women's or girls' underwear."

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

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

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY J81984 and revoking or modifying any other ruling not specifically identified, to reflect the proper classification of certain knit camisoles according to the analysis contained in proposed Headquarters Ruling Letter (HQ) 966807, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise.

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

**DATED:** March 11, 2004

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachment

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 966807  
March 11, 2004  
CLA-2 RR:CR:TE 966807 KSH  
TARIFF NO.: 6109.10.0037

GAIL T. CUMINS, ESQ.  
SHARRETT, PALEY, CARTER & BLAUVELT, P.C.  
*Seventy-five Broad Street*  
*New York, NY 10004*

RE: Modification of New York Ruling Letter (NY) J81984, dated April 3, 2003; Classification of certain knit camisoles

DEAR MS. CUMINS:

This is in response to your letter of September 5, 2003, in which you request reconsideration of New York Ruling Letter (NY) J81984, issued to your client O'Bryan Brothers Inc., on April 3, 2003, concerning, in part, the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a tank-styled camisole constructed of fine rib knit 100% cotton fabric and a camisole with spaghetti shoulder straps constructed with a fine rib knit 100% cotton fabric. The articles were classified in subheading 6109.10.0060, HTSUSA, which provides for "tank tops . . . knitted or crocheted: Of cotton: women's." Through counsel, you have provided additional information that was not submitted at the time of the ruling request regarding how the garments are sold, used and known. Upon your request we have reviewed NY J81984 and, with respect to these two garments, found it to be in error. Therefore, this ruling modifies NY J81984 as it pertains to the classification of the aforementioned garments.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 1993), notice of the proposed modification of NY J81984 was published on January 7, 2004, in Vol. 38, Number 2, of the CUSTOMS BULLETIN. CBP received no comments.

FACTS:

Two samples were submitted in conjunction with your request for reconsideration. The first sample is identified as Style 176040. It is a tank-styled camisole constructed with a fine rib knit 100% cotton fabric. The garment features elasticized capping on the rounded rear neckline, shoulder straps and armholes, a lace-like insert at the V-neck front, side seams, 1 $\frac{3}{4}$ " shoulder straps and a hemmed bottom.

The second sample is identified as Style 176440. It is a camisole constructed with a fine rib knit 100% cotton fabric. The garment features elasticized spaghetti shoulder straps  $\frac{1}{4}$ " wide that extend to form the edging on the armholes, a lace-like trim at the V-neck front, side seams and a hemmed bottom.

You submit that the physical characteristics of the garments, the environment of sale and advertising and marketing material support the contention that the garments are underwear.



## ISSUE:

Whether the knit camisole garments are classifiable as underwear under subheading 6109.10.0037, HTSUSA, or as tank tops under subheading 6109.10.0060, HTSUSA?

## LAW AND ANALYSIS:

Classification of goods under the HTSUSA is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes (EN), constitute the official interpretation at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings.

The competing provisions are subheading 6109.10.0037, HTSUSA, which provides for underwear garments falling within the purview of women's or girls' cotton knit T-shirts, singlets, tank tops, and similar garments, and subheading 6109.10.0060, HTSUSA, which provides for women's non-underwear knit cotton tank tops.

In *St. Eve Int'l Inc. v. United States*, 267 F. Supp. 2d 1371 (2003), the Court of International Trade dealt with the classification of camisoles as underwear garments in subheading 6109.10.0037, HTSUSA or as tank tops in subheading 6109.10.0060, HTSUSA. The Court gave consideration to the general criteria for classification set forth in *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter *Carborundum*) to determine that the camisoles at issue therein were properly classified as undergarments of subheading 6109.10.0037, HTSUSA. Those criteria include: the general physical characteristics of the article, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. Among the detailed findings set forth by the court were the reputation of the importer in the trade for underwear, intimate apparel, and sleepwear; the camisoles are marketed as underwear; stores offer the camisoles for sale in their lingerie and intimate apparel department; the camisoles are not offered for sale as sportswear; the camisoles are sold year round; the camisoles are offered in the lingerie sections of retailer's catalogues and; the camisoles are sold with matching underwear. *Carborundum, supra*. The court determined that the camisoles are designed, knit, stitched together, imported, consigned and sold principally in the women's intimates or underwear departments of walk-in retail stores and classified the garments in subheading 6109.10.0037, HTSUSA, as undergarments.

You present the following persuasive factors in support of classification of the camisoles at issue as underwear: (1) your client is exclusively engaged in the marketing and distribution of underwear and sleepwear; (2) the camisoles are only sold to the intimate apparel buyers of large department and chain stores and displayed in these retail establishments alongside other intimate apparel articles; (3) the garments are only offered and sold as underwear; (4) the camisoles are sold throughout the year; (5) advertisements for

the camisoles appear alongside other underwear garments and; (6) some of the camisoles are sold with matching underwear.<sup>1</sup>

Based upon the evidence presented and the factors set forth in *St. Eve, supra*, the camisoles are classified in subheading 6109.10.0037, HTSUSA, which provides for “T-shirts, singlets, tank tops and similar garments, knitted or crocheted: Of cotton: Women’s or girls’: Underwear.”

**HOLDING:**

NY J81984, dated April 3, 2003, is hereby modified.

The camisoles are classified in subheading 6109.10.0037, HTSUSA, as “T-shirts, singlets, tank tops and similar garments, knitted or crocheted: Of cotton: Women’s or girls’: Underwear.” The General Column 1 Rate of Duty is 16.5 percent *ad valorem* and the textile category is 352.

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 your client check, close to the time of shipment, the Textile Status Report for Absolute Quotas, available on the CBP website at [www.cbp.gov](http://www.cbp.gov).

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local CBP 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.

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

19 CFR PART 177

REVOCATION OF RULING LETTER AND  
TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF A SET TOP BOX

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

ACTION: Notice of revocation of a ruling letter and treatment relating to the tariff classification of a set top box.

<sup>1</sup>As noted above, information regarding how the garments are used, sold and known was not presented at the time of the ruling request. NY J81984 would have been revoked by operation of law as a result of the decision in *St. Eve International Inc., supra*, had such information been provided and the garments continued to be classified in subheading 6109.10.0060, HTSUS.

**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 pertaining to the tariff classification of a set top box under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on February 4, 2004, in the CUSTOMS BULLETIN. No comments were received in response to the proposed action.

**EFFECTIVE DATE:** This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Deborah Stern, General Classification Branch (202) 572–8785.

**SUPPLEMENTARY INFORMATION:**

#### BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter “Title VI”) became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with 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)), notice was published on February 4, 2004 in the CUSTOMS BULLETIN, Volume 38, Number 6, proposing to revoke NY G82574, dated October 3, 2000, which classified a set top box which is used only for cable television reception in subheading 8528.12.92,

HTSUS, as a set top box which has a communications function. No comments were received in response to the proposed action.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one 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, as amended (19 U.S.C. 1625(c)(2)), 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 to the importer's or Customs' previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised 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.

In NY G82574, dated October 3, 2000, Customs classified a set top box which is used only for cable television reception in subheading 8528.12.92, HTSUS, as a set top box which has a communications function. This provision was adopted pursuant to the Information Technology Agreement (ITA), which went into effect on July 1, 1997, by Presidential Proclamation No. 7011 (62 FR 35909 (July 2, 1997)). The agreement covers certain specified headings and subheadings, as well as specific products, wherever they fall to be classified. One of these specific products is a set top box which has a communications function. The ITA's description of the product is that it must be a microprocessor-based device with a modem for gaining access to the Internet and having a function of interactive information exchange.

The U.S. created two new subheadings, 8525.10.10 and 8528.12.92, in the HTSUS for "set top boxes which have a communications function." Customs considers the ITA description to provide the minimum requirements for qualification under the ITA. Because the set top box classified in NY G82574 is used only for cable television reception and has no modem for gaining access to the Internet, it does not satisfy the ITA requirements. Therefore, while it is a set top box, it is not a set top box which has a communications function of subheading 8528.12.92, HTSUS. Accordingly, it is classified in

subheading 8528.12.97, HTSUS, which provides for other reception apparatus for television.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY G82574 and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in the attached ruling, HQ 966799. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical merchandise.

Dated: March 15, 2004

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachment

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
**HQ 966799**  
March 15, 2004  
**CLA-2 RR:CR:GC 966799 DBS**  
**CATEGORY:** Classification  
**TARIFF NO.:** 8528.12.97

MS. MADELINE B. KUFLIK  
PANASONIC  
*One Panasonic Way 3B-6*  
*Secaucus, NJ 07094*

**RE:** Revocation of NY G82574; set top boxes; Information Technology Agreement

DEAR MS. KUFLIK:

On October 3, 2000, the National Commodity Specialist Division of this office issued to you on behalf of Matsushita Television and Network Systems New York (NY) G82574, which classified a set top terminal in subheading 8528.12.92, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered NY G82574 and the additional information sent to Customs on October 30, 2003, and have determined the classification to be incorrect.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of the above identified ruling was published on February 4, 2004, in the CUSTOMS BULLETIN, Volume 38, Number 6. No comments were received in response to the proposed action.

**FACTS:**

In NY G82574 the product at issue, a set top box (set top terminal) identified as model TZ-PCD2000, was described as follows:

The set top terminal is equipped with a tuner and is designed to receive both analog (NTSC) and digital (QAM) cable television broadcast signals via a RF cable. The tuner receives, demodulates and converts the television broadcast signal for direct viewing on to the television set. This model has the capability to communicate by sending a signal back to the cable headend via the same RF cable. This particular model does not incorporate a modem and has output terminals for both composite video and S-video signals.

In review of the treatment of set top boxes Customs has previously classified, Panasonic was asked to provide additional information to Customs regarding the model TZ-PCD2000 set top box. Additional facts presented pertinent to this ruling include that the box is only used for cable television reception. It has an out of band (OOB) communications link that is used by the cable company to authenticate the cable box in the cable system and is used by the customer to order pay-per-view. You stated that the box does not have any Internet capability.

**ISSUE:**

Whether the classification of the TZ-PCD2000 set top box falls in subheading 8528.12.92, HTSUS, as a set top box which has a communications function, or in subheading 8528.12.97, HTSUS, as other reception apparatus for television.

**LAW AND ANALYSIS:**

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

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

The HTSUS provisions under consideration are as follows:

**8528** Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors:

Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus:

8528.12	Color:
	Other:
	Other:
	Other:
8528.12.92	Set top boxes which have a communications function
	* * *
8528.12.97	Other

We affirm that the set top box at issue is reception apparatus for television at GRI 1. Therefore, classification at the heading level is not at issue. Once the heading is no longer at issue, we turn to GRI 6, which provides:

For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

When the Information Technology Agreement (ITA) went into effect on July 1, 1997, pursuant to Presidential Proclamation No. 7011 (62 FR 35909 (July 2, 1997)), the U.S. created various new provisions to implement the agreement. The amendments set forth in Presidential Proclamation No. 7011 are based on the framework established in the Declaration on Trade in Information Technology Products, which, together with its Annex, constitute the ITA. See 62 FR 35909, para. 1. The Annex is comprised of two attachments. Attachment A, Section 1 lists the Harmonized System (HS) headings and subheadings covered by the ITA. (The HS is the international agreement on which the HTSUS is based.) Attachment A, Section 2 lists certain semiconductor manufacturing and testing equipment and parts thereof to be covered by the ITA. Attachment B is a positive list of specific products to be covered by the ITA *wherever they are classified in the HS* (emphasis added). See Attachment A and Attachment B, Annex of the ITA.

Among the amendments adopted by the U.S. were two new subheadings for “set top boxes which have a communications function.” One is found under heading 8525, HTSUS, which provides in relevant part for transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television. The other is under heading 8528, HTSUS, enumerated above. The tariff term “set top boxes which have a communication function” is found in the positive list of specific products set forth in Attachment B. The type of product intended to be covered by the ITA is described as “a microprocessor-based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange.” Presidential Proclamation No. 7011. Therefore, Customs considers this description to provide the minimum requirements for a set top box to be classified as “set top boxes which have a communications function.”

The ITA requires that these set top boxes be microprocessor-based devices. That is, they must contain a microprocessor. In addition to a microprocessor,

the ITA requires that these set top boxes incorporate a modem for gaining access to the Internet. Modems are devices that transmit digital data by modulating and demodulating a signal. A modem alone does not provide access to the Internet. In simple terms, to gain access to the Internet, a modem is used to connect to an Internet Service Provider (ISP), and the ISP connects the user to the Internet. Hence, the ITA requires that these microprocessor-based set top boxes must be able to gain access to the Internet, not simply incorporate a modem.

The ITA also requires that this class of set top boxes has a function of interactive information exchange. As the Internet provides a user with the ability to have interactive information exchange, Customs considers the existence of a modem for gaining access to the Internet to indicate that a set top box has a function of interactive information exchange. Other factors, such as an RJ11 telephone jack, or may also be indicative of interactive information exchange.

It is unclear from the facts provided whether the instant set top box is a microprocessor-based device. However, the model TZ-PCD2000 set top box it is designed only for cable television reception. It does not have a modem or any other means to gain access to the Internet. Without access to the Internet, it does not satisfy the ITA requirements of a "set top box which has a communications function." Therefore, it is inconsequential that it may have a function of interactive information exchange via the OOB channel. Accordingly, it is not classified in subheading 8528.12.92, HTSUS.

In the event that merchandise is not found to be classifiable under a specific subheading, it is then classified as "other." The "other," or "basket," provision of a subheading should be used only if there is no tariff category that more specifically covers the merchandise. *See DMV USA v. United States*, Slip. Op. 2001-99, 9 (C.I.T. August 10, 2001), citing *Rollerblade, Inc. v. United States*, 116 F. Supp. 2d 1247, 1251 (C.I.T. 2000); *see also* GRI 3(a) ("The heading which provides the most specific description shall be preferred to headings providing a more general description."). As there is no specific provision for a set top box that is reception apparatus for television but does not satisfy the requirements of the ITA, it falls to be classified in subheading 8528.12.97, HTSUS.

This decision is consistent with Headquarters Ruling Letter (HQ) HQ 966742, dated December 15, 2003, in which we discussed the ITA requirements and classified a set top box that satisfied them in subheading 8528.12.92, HTSUS. *See also* HQ 966669, dated January 12, 2004. In addition, the set top box here is factually distinguishable from other set top boxes Customs has classified in subheading 8528.12.92, HTSUS, in rulings such as NY I87893, dated October 31, 2002, NY D82241, dated September 28, 1998 and NY F80216, dated December 14, 1999, because the set top boxes in those rulings all have modems and can access the Internet.

For the foregoing reasons, we find NY G82574 to be incorrect.

**HOLDING:**

The set top box model TZ-PCD2000 is classified in subheading 8528.12.97, HTSUS, which provides for "Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors: Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus: Color: Other: Other: Other: Other."



**EFFECT ON OTHER RULINGS:**

NY G82574, dated October 3, 2000, is hereby REVOKED. In accordance with 19 U.S.C 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

John Elkins for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

---

**19 CFR PART 177****NOTICE OF PROPOSED MODIFICATION OF RULING LETTER  
AND TREATMENT RELATING TO THE COUNTRY OF ORIGIN  
MARKING REQUIREMENTS FOR IMPORTED REPLACEMENT  
AUTOMOTIVE PARTS THAT ARE REPACKAGED WITHIN THE  
UNITED STATES FOR SALE AT RETAIL**

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

**ACTION:** Notice of proposed modification of ruling letter and treatment relating to the country of origin marking requirements for imported replacement automotive parts that are repackaged within the United States for sale at retail.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CBP”) proposes to modify one ruling letter and any treatment previously accorded by CBP to substantially identical transactions, concerning the country of origin marking requirements for imported replacement automotive parts that are repackaged within the United States for sale at retail. Comments are invited on the correctness of the intended action.

**DATE:** Comments must be received on or before April 30, 2004.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9<sup>th</sup> 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: Edward Caldwell,  
Commercial Rulings Division (202) 572-8872.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify one ruling letter relating to the country of origin marking requirements for imported replacement automotive parts that are repackaged in cartons within the United States for sale at retail. Although in this notice CBP is specifically referring to the modification of Headquarters Ruling Letter ("HRL") 734491 dated April 13, 1992, (see Attachment "A"), this notice covers any rulings on similar merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on transactions similar to the one presented in this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP intends to modify any treatment previously accorded by CBP to substantially identical merchandise under the stated circumstances. This treatment may, among other reasons, be the result of the im-

porter's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the relevant statutes. Any person involved with substantially identical merchandise or transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical merchandise or transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Section 304 of the Tariff Act of 1930 (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article.

In HRL 734491, CBP determined that, subsequent to repackaging and assuming that the individual parts were individually marked with their country of origin, marking a sealed or unsealed retail carton with "Contents Imported/See Article for Country of Origin" or with words to similar effect, would be sufficient to advise the ultimate purchaser of the country of origin of the replacement parts contained within. Upon further review of the matter, CBP has determined that such a marking on a sealed retail container is unacceptable unless the sealed container is transparent so as to permit the ultimate purchaser to view the country of origin marking on the article. In making this determination, we note that where transparent packaging is not used, a sealed container presumably denies the ultimate purchaser the opportunity to view such country of origin information upon a casual examination of the article contained within the sealed container.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify HRL 734491 and any other rulings not specifically identified to reflect the proper country of origin marking requirements applicable to imported automotive parts that are repackaged in the United States pursuant to the analysis set forth in proposed HRL 562867. (*See Attachment "B"*). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to modify any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: March 16, 2004

Edward M. Leigh for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 734491  
April 13, 1992  
MAR-2-05 CO:R:C:V 734491 NL  
CATEGORY: Marking

MR. ERIC INMAN  
CORPORATE PACKAGING MANAGER  
BALCAMP, INC.  
2601 South Holt Road  
Indianapolis, IN 46241

RE: Country of Origin Marking—Repackaged Auto Parts; 19 CFR 134.46;  
19 CFR 134.26; 19 CFR 134.24(c).

DEAR MR. INMAN:

This is in response to your letter dated January 24, 1992, in which you request guidance concerning the country of origin marking requirements for automotive replacement parts.

FACTS:

Balkamp is a distributor and repackager of automotive replacement parts, including some which are imported. Your letter advises that the imported parts enter the U.S. in bulk for repackaging in cartons. The parts are marked as to their origin either on the parts themselves or on their inner packaging. We assume for purposes of this ruling that these two types of marking satisfy the requirements of permanence, legibility, and conspicuousness. We also assume that the inner packaging consists of a plastic bag or the like which is not suitable by itself as packaging for retail sales. You further indicate that Balcamp's U.S. address is printed on the outside of the cartons which will be used to package the parts for retail sale.

You believe that the marking of the parts themselves or their inner packaging is sufficient to comply with the country of origin marking requirements, notwithstanding the fact that they are sold to the ultimate purchaser in a carton upon which is printed Balcamp's U.S. address. The above-described marking would, in your opinion, be sufficient to allow the ultimate purchaser to make a purchasing decision based on the country of origin of the automotive part.

ISSUE:

Is additional or different marking required for the above-referenced auto parts repackaged in cartons?

LAW AND ANALYSIS:

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and perma-

nently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

Inasmuch as Balkamp conducts repacking operations for its imported parts, the requirements of 19 CFR 134.26 would be applicable. In brief, these requirements are that the importer must supply Customs with a certificate to the effect that the new packaging will not obscure or conceal the country of origin marking on the article, and that the packaging otherwise will satisfy the requirements of 19 U.S.C. 1304 and Part 134, Customs Regulations. In addition, the importer must certify that he will provide notice to subsequent purchasers or repackers of their obligations under 19 U.S.C. 1304 and Part 134, Customs Regulations.

With respect to replacement auto parts it is Customs position that the ultimate purchaser of such articles is the owner of the automobile into which the parts will be installed. See HRL 733241 (August 27, 1989). In practice, sometimes the owner is shown the part by the installer, sometimes the retail box is shown either before or after, and sometimes not at all. The marking requirements for auto parts must be tailored to account for these possibilities. Bearing in mind that the fundamental marking principle is that the article be marked in such a manner as to indicate its origin to the ultimate purchaser, we are of the opinion that the placement of properly marked auto parts in unmarked containers would tend to obscure the marking from the ultimate purchaser. Applying the marking requirements for sealed and unsealed containers set forth at 19 CFR 134.24(c), we cannot find that the marking on the article would be visible through the container. Nor can we find, for the reasons stated above, that the box containing an auto part would normally be opened by the ultimate purchaser for examination (including examination for country of origin marking) prior to purchase. If the box were to be sealed, the regulation plainly requires that it be marked as to the origin of its contents. Accordingly, whether the boxes for the repacked imported auto parts are sealed or unsealed, they must be marked to indicate that their contents are articles of foreign origin.

In this instance we regard as sufficient marking a statement on the retail box stating, "Contents Imported/See Article for Country of Origin.", or words to similar effect. Such words would be sufficient to advise the ultimate purchaser of the foreign origin of the auto part. See HQ 732099 (November 3, 1989)("see bulb for country of origin" is acceptable on resale carton of marked bulb); HQ 732374 (July 9, 1989)("refer to neck label" acceptable on polybag containing shirt).

A second reason for requiring marking of the box is that a reference to the U.S. appears on the box in the form of Balkamp's U.S. address. This triggers the requirements of 19 CFR 134.46. As provided by that section, in any case in which a reference to the U.S. or any geographic location other than the country of origin appears on an imported article or its container, the name of the actual country of origin must appear, in close proximity and in lettering of comparable size, preceded by "Made in", "Product of", or other similar words. In the instant context we regard the words previously described, i.e., "Contents Imported/See Article for Country of Origin" as similar in meaning for country of origin marking purposes. Such words, if rendered in close

proximity to the U.S. address, generally on the same side of the box and in lettering of comparable size, would satisfy the requirements of 19 CFR 134.46.

**HOLDING:**

Replacement auto parts imported for repackaging are subject to the certification and notice requirements of 19 CFR 134.26. Marking of the retail boxes is required, notwithstanding that the parts themselves are marked, pursuant to 19 CFR 134.24(c) and 19 CFR 134.46. Marking stating, "Contents Imported, See Article for Country of Origin" satisfies the requirements of 19 U.S.C. 1304 and Part 134, Customs Regulations.

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
**HQ 562867**  
MAR-2-05 RR:CR:SM 562867 EAC  
CATEGORY: Marking

CORPORATE PACKAGING MANAGER  
BALKAMP, INC.  
*2601 South Holt Road*  
*Indianapolis, IN 46241*

RE: Country of origin marking requirements for repackaged automotive parts; sealed and unsealed containers; 19 CFR 134.46; 19 CFR 134.26

DEAR SIR OR MADAM:

Pursuant to Mr. Eric Inman's request for a ruling on behalf of Balkamp Inc., pertaining to the country of origin marking requirements for imported automotive parts that are repackaged within the United States, U.S. Customs and Border Protection ("CBP") issued Headquarters Ruling Letter ("HRL") 734491 dated April 13, 1992, to your company. Upon further consideration of that ruling, we have determined that marking a sealed retail container with the statement "Contents Imported/See Article for Country of Origin" is not permitted under the circumstances presented in that case unless the sealed container is transparent so as to permit the ultimate purchaser to view the marking on the article. Therefore, HRL 734491 is hereby modified for the reasons set forth below.

**FACTS:**

Balkamp is a distributor and repackager of automotive replacement parts, including some which are imported. We have been advised that the imported parts enter the United States in bulk for repackaging in cartons. The parts are marked as to their origin either on the parts themselves or on their inner packaging. We assume for purposes of this ruling that these two types of marking satisfy the requirements of permanence, legibility, and conspicuousness. We also assume that the inner packaging consists of a plastic bag

or the like which is not suitable by itself as packaging for retail sales. Balkamp's U.S. address is printed on the outside of the cartons which will be used to package the parts for retail sale.

In consideration of the foregoing, we held in HRL 734491 that marking sealed or unsealed cartons in which the automotive parts were repackaged with the statement "Contents Imported/See Article for Country of Origin" would be sufficient to advise the ultimate purchaser of the origin of the automotive part.

**ISSUE:**

Whether marking sealed or unsealed retail containers with Balkamp's U.S. address as well as with the statement "Contents Imported/See Article for Country of Origin" satisfies the applicable marking requirements.

**LAW AND ANALYSIS:**

Section 304 of the Tariff Act of 1930 (19 U.S.C. § 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. § 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. "The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." United States v. Friedlander & Co., 27 C.C.P.A. 297 at 302 (1940).

Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and the exceptions of 19 U.S.C. § 1304. Section 134.1(b), Customs Regulations (19 CFR 134.1(b)), defines "country of origin" as the country of manufacture, production or growth of any article of foreign origin entering the United States.

The provisions of section 134.26, Customs Regulations (19 CFR 134.26), are applicable to imported articles that are repackaged within the United States. Specifically, section 134.26(a), Customs Regulations (19 CFR 134.26(a)), provides, in pertinent part, that:

If an imported article subject to these requirements is intended to be repackaged in retail containers . . . after its release from Customs custody, or if the district director having custody of the article, has reason to believe that such article will be repacked after its release, the importer shall certify to the port director that: (1) If the importer does the repackaging, he shall not obscure or conceal the country of origin marking appearing on the article, or else the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements.

As applied, section 134.26(a)(1) must be considered in this case because, as stated above, Balkamp repackages imported replacement automotive parts within the United States. As such, Balkamp is required to certify upon

importation that, after repackaging operations are completed, either the country of origin markings on the individual automotive parts will not be obscured or that the new containers that will reach the ultimate purchaser (in this case, the consumer at retail) will be properly marked with the part's country of origin. In order to determine whether such containers are properly marked, however, we must consider whether the reference placed upon the containers that directs the ultimate purchaser to inspect the article for country of origin is permissible under the marking regulations when such containers also display Balkamp's U.S. address.

Under section 134.41(b), Customs Regulations (19 CFR 134.41(b)), the country of origin is considered to be conspicuous if the ultimate purchaser in the United States is able to find the marking easily and read it without strain. Potentially of concern in the instant case, however, are the requirements of a related provision of the marking regulations, section 134.46, Customs Regulations (19 CFR 134.46).

Section 134.46 requires that, in instances where the name of any city or locality in the United States, or the name of any foreign country or locality other than the name of the country or locality in which the article was manufactured or produced, appears on an imported article or its container, and those words or name may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear, legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in", "Product of" or other words of similar meaning. CBP has ruled that in order to satisfy the close proximity requirement, the country of origin marking must appear on the same side(s) or surface(s) in which the name of the locality other than the country of origin appears. See, HRL 708994 dated April 24, 1978.

The requirements of section 134.46 are designed to alleviate the possibility of misleading an ultimate purchaser with regard to the country of origin of an imported article, if such article or its container includes language which may suggest a U.S. origin (or other foreign locality not the correct country of origin). As applied, the requirements of section 134.46 are triggered in this case because Balkamp's U.S. address will be placed upon the containers sold at retail and this address could potentially deceive or mislead the ultimate purchaser of the automotive parts as to the actual country of origin of the items.

In regards to this issue, CBP has previously held that, under certain circumstances, a statement placed upon a product's packaging that directs the ultimate purchaser to inspect the actual article for country of origin information may satisfy the applicable marking regulations even if the packaging also contains the U.S. address of a domestic company. For example, in HRL 735332 dated August 18, 1994, automotive parts and accessories were imported in bulk and repackaged within the United States. The imported parts were repackaged into either six-sided opaque cardboard cartons or into transparent "blister pack" packages. The importer proposed to mark "Contents Imported. See Article for Country of Origin" on the outer surface of the opaque cartons or, in the case of the blister packs, on cardboard placards that were inserted into the blister packs. These markings were to be placed on the same panel, and in comparable print size, as the distributor's U.S. address on both the opaque cartons and the cardboard placards. It was further noted that the individual parts contained within the cartons and



blister packs would be individually marked with their country of origin and that the opaque cartons would be unsealed when sold at retail whereas the blister packs would be sealed.

At issue in HRL 735332 was whether the marking schemes proposed for the opaque cartons and cardboard placards were acceptable under the marking regulations. Upon considering the facts involved, we held that printing the proposed marking on the *unsealed* opaque cardboard cartons directly below the U.S. reference satisfied the applicable marking regulations, whereas an identical marking printed upon cardboard placards that were placed within the *sealed* blister packs failed to satisfy the requirements of the same provision.

The determinative consideration in HRL 735332 was the ability of the ultimate purchaser in each situation to determine the country of origin of the actual article contained within either the opaque carton or blister pack. In this respect, the unsealed opaque boxes clearly afforded the ultimate purchaser the opportunity to obtain origin information by casually examining the article at retail. The sealed blister packs, on the other hand, precluded the ultimate purchaser from engaging in such a casual inspection of the individual article at retail. Therefore, considering that the country of origin markings on the actual parts were also obscured by the blister packaging, it was evident that sealing blister packaging and directing the ultimate purchaser to inspect the actual article for country of origin information failed to satisfy the marking requirements set forth above.

CBP has considered a number of cases (cited, *infra*) where an article's proposed packaging contained the U.S. address of a domestic company and simultaneously advised the ultimate purchaser to inspect the actual article of commerce for country of origin information. In such cases, we have consistently held that, to be compliant with the marking regulations, the country of origin markings located on the actual article of commerce must be discoverable upon a "casual examination of the article." It has been noted that, in order for a sealed container to satisfy the foregoing requirements, the container must be transparent. See, for example, HRL 560776 dated May 4, 1999 (sealed packages containing imported electronic accessories that were marked with actual country of origin could contain a statement that directed the ultimate purchaser to inspect the actual articles for country of origin provided that the articles were packaged in clear plastic that allowed the ultimate purchaser to easily view such markings prior to purchase). It follows that, where transparent packaging is not used in such cases, a sealed container presumably denies the ultimate purchaser the opportunity to easily obtain country of origin information because undertaking a casual examination of the article would necessitate breaking the seal on the package. As such, CBP believes that directing the ultimate purchaser to inspect the actual article of commerce for country of origin information under such circumstances is not permissible under the marking regulations.

On the other hand, unsealed containers that include a reference to a U.S. address may be marked with a statement directing the ultimate purchaser to inspect the actual article for country of origin information, provided that the latter marking is in close proximity, on the same side, and in comparable print size as the U.S. address and that the country of origin marking on the article may be viewed by the ultimate purchaser upon a casual inspection of the item. See, for example, HRL 562832 dated October 10, 2003; HRL 559753 dated August 8, 1996; and HRL 559245 dated December 13, 1995.

**HOLDING:**

HRL 734491 dated April 13, 1992, is hereby modified. Marking a sealed container with the statement “Contents Imported/See Article for Country of Origin” is not permitted under the circumstances presented above unless the sealed container is transparent so as to permit the ultimate purchaser to view the marking on the article contained within.

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

**REVOCATION OF RULING LETTERS AND REVOCATION  
OF TREATMENT RELATING TO TARIFF CLASSIFICATION  
OF BLACKOUT DRAPERY FABRIC**

**AGENCY:** Bureau of Customs & Border Protection; Department of Homeland Security.

**ACTION:** Notice of revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of blackout drapery fabric.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs & Border Protection (CBP) is revoking two ruling letters relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of blackout drapery fabric. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed revocation was published in the Customs Bulletin of February 4, 2004, Vol. 38, No. 6. No comments were received.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 30, 2004.

**FOR FURTHER INFORMATION CONTACT:** Beth Safer, Textiles Branch: (202) 572-8825.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice proposing to revoke NY H81427, dated August 15, 2001, and HQ 965343, dated July 30, 2002, was published on February 4, 2004, in Vol. 38, No. 6, of the Customs Bulletin.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised CBP during the comment period. No comments were received.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP's previous interpretation of the HTSUSA. An importer's failure to advise CBP of substantially identical merchandise or of a specific ruling not identified in the proposed 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 this notice.

In NY H81427, and HQ 965343, CBP classified blackout drapery fabric under subheading 5903.90.2500 HTSUSA, which provides for "Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: Other: Of man-made fibers: Other: Other." Based on our analysis of the scope of the terms of headings 5903 and 5907, the Legal Notes, and the Explanatory Notes, we find that blackout drapery fabric of the type subject to this notice, should be classified in subheading 5907.00.6000, HTSUS,

which provides for “Textile fabrics otherwise impregnated, coated or covered; painted canvas being theatrical scenery, studio back-cloths or the like: Other: Of man-made fibers.”

Pursuant to 19 U.S.C. 1625 (c)(1), CBP is revoking NY H81427, HQ 965343, 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) 967030 (Attachment A) and HQ 966508 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical merchandise.

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

**DATED:** March 17, 2004

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

Attachments



[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
HQ 967030  
March 17, 2004  
CLA-2 RR:CR:TE 967030 BAS  
CATEGORY: Classification  
TARIFF NO.: 5907.00.6000

MS. KAY GAHA  
D.J. POWERS CO. INC.  
1809 E. Associates Lane  
Charlotte, NC 28217

RE: Revocation of NY H81427, dated August 15, 2001; Classification of Blackout Drapery Fabric

DEAR MS. GAHA:

This is in reference to New York Ruling Letter (NY) H81427, dated August 15, 2001. Upon review of the ruling, the Bureau of Customs and Border Protection (CBP) has determined that the merchandise was erroneously classified. This ruling letter revokes NY H81427, dated August 15, 2001 and sets forth the correct classification determination.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S. C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY H81427, as described below, was published in the Customs Bulletin, Volume 38, Num-

ber 6, on February 4, 2004. CBP received no comments during the notice and comment period that closed on March 5, 2004.

**FACTS:**

In New York Ruling letter (NY) H81427, dated August 15, 2001, two samples, of Blackout and Budget Blackout Draperies, were classified in subheading 5903.90.2500, under the Harmonized Tariff Schedule of the United States (HTSUS). Subheading 5903.90.2500, HTSUSA, provides for man-made fiber textile fabrics impregnated, coated, covered or laminated with plastics not over 70 percent by weight of rubber or plastics.

In NY H81427, the merchandise was described as follows:

Two representative samples were submitted (white in color) differing mainly in their respective weights (thicknesses [sic]). The product Roclon®, is described in the literature as “Blackout” 3-pass and “Budget Blackout” 2-pass and identified on the samples as Textralox B/O F/R, and Budget B/O F/R, respectively. You described them in your correspondence as being of a “base cloth of 70% polyester/30% cotton construction and having a rubber like backing on the back with an acrylic coating and 100% cotton flocking.”

These drapery materials are available in a variety of colors and will be imported as roll goods having 54” (137 cm) widths. You indicated that similar materials are also available in 48” (122 cm), 54” (137 cm) and 110” (280 cm) widths. These materials, being used as drapery materials, according to your documentation, have the advantages of better light control, improved acoustical properties, holds up better after dry cleaning than other materials and resists cracking and peeling, etc.

It was noted, from observation, that there was a black colored layer between the textile surface or layer and white layer on the other surface. Your letter made mention of a “rubber like” backing and cotton flocking, neither of which were apparent from the samples.

On July 30, 2002, this office issued HQ 965343, in which we affirmed NY H81427 and classified the subject merchandise in subheading 5903.90.2500, HTSUSA, which provides for “Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: Other: Of man-made fibers: Other: Other.”

**ISSUE:**

Is the subject blackout drapery fabric classified under heading 5903 which covers textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902; or under heading 5907, HTSUSA, as a textile fabric otherwise impregnated, coated or covered?

**LAW AND ANALYSIS:**

**HEADING 5903, HTSUSA**

While initial correspondence on the matter did not address the nature of the plastic material, it was brought to our attention that the plastic used in the drapery fabric is in the form of a foam. Notably the manufacturer’s website, [www.roc-lon.com](http://www.roc-lon.com) also indicates that the plastic utilized is in the form of acrylic foam. The nature of the plastic, which was not at issue in HQ 965343 is a determining factor in analyzing the classification issue. Accordingly, we sent a new sample of the product to the New York Customs and Border Protection Laboratory in order to determine whether the plastic was

cellular or non-cellular. The Laboratory Report Number NY 20032178, states that the coating is composed of an acrylic type cellular plastic material which has cotton flocking fibers covering the exterior surface.

Classification of goods under the HTSUS is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. Since the blackout drapery is composed of a textile and plastic combination we focus upon Chapter 39 which covers plastics and articles thereof and Chapter 59 which covers impregnated, coated, covered or laminated textile fabrics. We begin our analysis with a review of Section VII which encompasses Chapter 39. Section VII deals with plastics and articles thereof, rubber and articles thereof. There are no applicable Section notes. Next we review Chapter 39 (plastics and articles thereof). Chapter Note 2(m) states that the chapter does not cover goods of Section XI (textiles and textile articles). The Explanatory Notes to the Harmonized Commodity Description and Coding System ("ENs"), which represent the official interpretation of the tariff at the international level, facilitate the classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes to Chapter 39 state that the classification of plastic and textile combinations is essentially governed by Note 1(h) to Section XI, Note 3 to Chapter 56 and Note 2 to Chapter 59.

Note 1(h) to Section XI (textiles and textile articles) states that the section does not cover woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of Chapter 39. Thus it is necessary to determine what plastic covered or laminated fabrics are covered by Chapter 39.

The ENs to Chapter 39 state that the following plastic and textile combination products are covered by Chapter 39:

- (a) Felt impregnated, coated, covered or laminated with plastics, containing 50% or less by weight of textile material or felt completely embedded in plastics;
- (b) Textile fabrics and nonwovens, either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour;
- (c) Textile fabrics, impregnated, coated, covered or laminated with plastics, which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15°C and 30°C;
- (d) Plates, sheets and strip of cellular plastics combined with textile fabrics, felt or nonwovens, where the textile is present merely for reinforcing purposes.

In this respect unfigured, unbleached, bleached or uniformly dyed textile fabrics, when applied to one face only of these plates, sheets or strip, are regarded as serving merely for reinforcing purposes. Figured, printed or more elaborately worked textiles (e.g., by raising) and special products . . . , are regarded as having a function beyond that of reinforcement.

Although the acrylic component of the drapery fabric is cellular, it does not squarely meet the description in (d) of the Chapter 39 ENs cited above, because the plastic is covered with another material (the flock) and based on the analysis which follows, the Bureau of Customs and Border Protection (CBP) believes it is properly classified as a fabric of 5907, and as such is excluded from Chapter 39, by virtue of Note 2(m), Chapter 39. See HQ 961390, dated April 19, 2001.

We note that Note 1(h) does not preclude the classification of the blackout drapery in Section XI.

Next, the governing notes direct us to Note 3 to Chapter 56. Note 3 states that Headings 5602 and 5603 cover felts and nonwovens, respectively, that are coated or laminated with plastics. Since the material at issue does not involve felt or nonwoven material, Note 3, Chapter 56, is inapplicable.

Note 2(a) to Chapter 59 states that Heading 5903, HTSUS, applies to textile fabrics, impregnated, coated, covered, or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular) other than the following six exceptions:

- (1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change in color;
- (2) Products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15°C and 30°C (usually Chapter 39);
- (3) Products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color (chapter 39);
- (4) Fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually Chapters 50 to 55, 58 or 60);
- (5) Plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is merely present for reinforcing purposes (Chapter 39); or
- (6) Textile products of heading 5811.

The subject material seems to be described, at least in part, in exemption 5 above. We note however that the nature of the material (woven fabric, cellular plastics, flock) is not described in Note 2(a) above. Although the woven drapery fabric is combined with a sheet of cellular plastics, the sheet is covered with flock. The flock serves as part of the covering or coating material of the finished fabric.

Heading 5907 covers textile fabrics that have been impregnated, coated or covered, with materials other than plastics or rubber, provided the impregnation, coating or covering can be seen with the naked eye.

The ENs to Heading 5907, HTSUS, specifically lists flocked fabrics stating:

The fabrics covered here include:

(G) Fabric, the surface of which is coated with glue (rubber glue or other), plastics, rubber or other materials and sprinkled with a fine layer of other materials such as:

(1) Textile flock or dust to produce imitation suedes. . . .

The blackout drapery at issue is constructed of a woven fabric, covered with a cellular plastic, which is itself covered on the outside surface with cotton flocking fibers.

The blackout drapery fabric therefore meets the description of a textile fabric otherwise impregnated, covered or coated of Heading 5907, HTSUS. Accordingly, the blackout drapery fabric is classified as a fabric under Heading 5907, HTSUS. We note that as the textile and plastic combination is found to be classifiable in Chapter 59, it is excluded from classification in Chapter 39.

This ruling is consistent with other rulings in which “three flocked” blackout liner materials for use in the manufacture of draperies have been classified in heading 5907, HTSUSA, and in which a foamed PVC jacket shell covered with textile flock was determined to be of a fabric of 5907, HTSUSA. HQ 961390, April 19, 2001; NY G88375, dated March 27, 2001.

The final step in the analysis requires a determination as to whether the blackout drapery fabric is appropriately classified under 5907.00.60, HTSUSA, which provides for “Textile fabrics otherwise impregnated, coated or covered . . . Of man-made fibers” or under subheading 5907.00.80, HTSUSA, which provides for “Textile fabrics otherwise impregnated, coated or covered . . . Other”.

Subheading Note 2(A) to Section XI of the HTSUSA states the following:

Products of chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of chapters 50 to 55 or of heading 5809 consisting of the same textile materials.

Subheading Note 2(B) to Section XI of the HTSUSA states in relevant part that for application of Note 2(A):

(a) Where appropriate, only the part which determines the classification under general interpretative rule 3 shall be taken into account;

In the instant case, it is the fabric component of the blackout drapery that determines its classification, not the coating or the flocking. Accordingly, in determining the appropriate subheading we evaluate only the fabric component.

Note 2(A) to Section XI reads in relevant part:

Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and 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.

\* \* \*



As the textile component of the blackout drapery is 70 percent polyester and 30 percent cotton, it is properly classifiable in subheading 5907.00.6000, HTSUSA, which provides for "Textile fabrics otherwise impregnated, coated or covered; painted canvas being theatrical scenery, studio back-cloths or the like: Other: Of man-made fibers."

**HOLDING:**

NY H81427, dated August 15, 2001 is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

The blackout drapery fabric is classifiable in subheading 5907.00.6000, HTSUS, which provides for "Textile fabrics otherwise impregnated, coated or covered; painted canvas being theatrical scenery, studio back-cloths or the like: Other: Of man-made fibers."

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,  
March 17, 2004  
HQ 966508  
CLA-2 RR:CR:TE 966508 BAS  
CATEGORY: Classification  
TARIFF NO.: 5907.00.6000

ROBERT A. SHAPIRO  
BARNES, RICHARDSON & COLBURN  
1420 New York Avenue, N.W.  
Suite 700  
Washington, D.C. 20005

RE: Reconsideration of HQ 965343, dated July 30, 2002 and NY H81427, dated August 15, 2001; Classification of Blackout Drapery Fabric

DEAR MR. SHAPIRO:

This is in reply to your letter, dated May 27, 2003, on behalf of Rockland Industries, Inc., (Rockland) requesting reconsideration of Headquarters Ruling Letter (HQ) 965343, dated July 30, 2002, and New York Ruling Letter (NY) H81427, dated August 15, 2001, concerning the tariff classification of the Roc-Lon blackout drapery fabric (BDL). You provided us with a sample to assist us in our determination.

Upon review of the ruling, the Bureau of Customs and Border Protection (CBP) has determined that the merchandise was erroneously classified. This ruling letter revokes HQ 965343 dated July 30, 2002 and NY H81427, dated August 15, 2001 and sets forth the correct classification determination.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S. C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of HQ 965343, as

described below, was published in the *Customs Bulletin*, Volume 38, Number 6, on February 4, 2004. CBP received no comments during the notice and comment period that closed on March 5, 2004.

FACTS:

In New York Ruling letter (NY) H81427, dated August 15, 2001, two samples, of Blackout and Budget Blackout Draperies, were classified in subheading 5903.90.2500, under the Harmonized Tariff Schedule of the United States (HTSUS). Subheading 5903.90.2500, HTSUSA, provides for man-made fiber textile fabrics impregnated, coated, covered or laminated with plastics not over 70 percent by weight of rubber or plastics.

In NY H81427, the merchandise was described as follows:

Two representative samples were submitted (white in color) differing mainly in their respective weights (thicknesses [sic]). The product Roc-Lon®, is described in the literature as “Blackout” 3-pass and “Budget Blackout” 2-pass and identified on the samples as Textralox B/O F/R, and Budget B/O F/R, respectively. You described them in your correspondence as being of a “base cloth of 70% polyester/30% cotton construction and having a rubber like backing on the back with an acrylic coating and 100% cotton flocking.”

These drapery materials are available in a variety of colors and will be imported as roll goods having 54” (137 cm) widths. You indicated that similar materials are also available in 48” (122 cm), 54” (137 cm) and 110” (280 cm) widths. These materials, being used as drapery materials, according to your documentation, have the advantages of better light control, improved acoustical properties, holds up better after dry cleaning than other materials and resists cracking and peeling, etc.

It was noted, from observation, that there was a black colored layer between the textile surface or layer and white layer on the other surface. Your letter made mention of a “rubber like” backing and cotton flocking, neither of which were apparent from the samples.

On July 30, 2002, this office issued HQ 965343, in which we affirmed NY H81427 and classified the subject merchandise in subheading 5903.90.2500, HTSUSA, which provides for “Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: Other: Of man-made fibers: Other: Other.”

On May 27, 2003, you submitted a detailed description of the production process used to produce the Roc-Lon BDL and requested reconsideration of HQ 965343. Specifically, you noted that the Roc-Lon BDL is coated with a mixture of clay, titanium dioxide, carbon black, flame retardant, acrylic and textile flock. You provided us with a new sample of the Budget Blackout White/White. The new sample appears to be the same as the Budget Blackout at issue in HQ 965343. You argue that the Roc-Lon BDL is properly classifiable in heading 5907, HTSUSA. We note that the request for a classification determination is for the purpose of export of the blackout draperies. General Note 5, HTSUSA, indicates that the statistical reporting numbers for articles classified in Chapters 1 through 97 of the HTSUSA may be used in place of comparable Schedule B numbers on the Shipper’s Export Declaration.

## ISSUE:

Is the subject blackout drapery fabric classified under heading 5903 which covers textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902; or under heading 5907, HTSUSA, as a textile fabric otherwise impregnated, coated or covered?

## LAW AND ANALYSIS:

## HEADING 5903, HTSUSA

While your initial correspondence did not address the nature of the plastic material, your submission of May 27, 2003 stated that the plastic used in the drapery fabric is in the form of a foam. Notably the manufacturer's website, [www.roc-lon.com](http://www.roc-lon.com) also indicates that the plastic utilized is in the form of acrylic foam. The nature of the plastic, which was not at issue in HQ 965343 is a determining factor in analyzing the classification issue. Accordingly, we sent the new sample to the New York Customs and Border Protection Laboratory in order to determine whether the plastic was cellular or non-cellular. The Laboratory Report Number NY 20032178, states that the coating is composed of an acrylic type cellular plastic material which has cotton flocking fibers covering the exterior surface.

Classification of goods under the HTSUS is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. Since the blackout drapery is composed of a textile and plastic combination we focus upon Chapter 39 which covers plastics and articles thereof and Chapter 59 which covers impregnated, coated, covered or laminated textile fabrics. We begin our analysis with a review of Section VII which encompasses Chapter 39. Section VII deals with plastics and articles thereof, rubber and articles thereof. There are no applicable Section notes. Next we review Chapter 39 (plastics and articles thereof). Chapter Note 2(m) states that the chapter does not cover goods of Section XI (textiles and textile articles). The Explanatory Notes to the Harmonized Commodity Description and Coding System ("ENs"), which represent the official interpretation of the tariff at the international level, facilitate the classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI. The Explanatory Notes to Chapter 39 state that the classification of plastic and textile combinations is essentially governed by Note 1(h) to Section XI, Note 3 to Chapter 56 and Note 2 to Chapter 59.

Note 1(h) to Section XI (textiles and textile articles) states that the section does not cover woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of Chapter 39. Thus it is necessary to determine what plastic covered or laminated fabrics are covered by Chapter 39.

The ENs to Chapter 39 state that the following plastic and textile combination products are covered by Chapter 39:

- (a) Felt impregnated, coated, covered or laminated with plastics, containing 50% or less by weight of textile material or felt completely embedded in plastics;
- (b) Textile fabrics and nonwovens, either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of colour;

- (c) Textile fabrics, impregnated, coated, covered or laminated with plastics, which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15°C and 30° C;
- (d) Plates, sheets and strip of cellular plastics combined with textile fabrics, felt or nonwovens, where the textile is present merely for reinforcing purposes.

In this respect unfigured, unbleached, bleached or uniformly dyed textile fabrics, when applied to one face only of these plates, sheets or strip, are regarded as serving merely for reinforcing purposes. Figured, printed or more elaborately worked textiles (e.g., by raising) and special products . . . , are regarded as having a function beyond that of reinforcement.

Although the acrylic component of the drapery fabric is cellular, it does not squarely meet the description in (d) of the Chapter 39 ENs cited above, because the plastic is covered with another material (the flock) and based on the analysis which follows, the Bureau of Customs and Border Protection (CBP) believes it is properly classified as a fabric of 5907, and as such is excluded from Chapter 39, by virtue of Note 2(m), Chapter 39. See HQ 961390, dated April 19, 2001.

We note that Note 1(h) does not preclude the classification of the blackout drapery in Section XI.

Next, the governing notes direct us to Note 3 to Chapter 56. Note 3 states that Headings 5602 and 5603 cover felts and nonwovens, respectively, that are coated or laminated with plastics. Since the material at issue does not involve felt or nonwoven material, Note 3, Chapter 56, is inapplicable.

Note 2(a) to Chapter 59 states that Heading 5903, HTSUS, applies to textile fabrics, impregnated, coated, covered, or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular) other than the following six exceptions:

- (1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye (usually chapters 50 to 55, 58 or 60); for the purpose of this provision, no account should be taken of any resulting change in color;
- (2) Products which cannot, without fracturing, be bent manually around a cylinder of a diameter of 7 mm, at a temperature between 15°C and 30°C (usually Chapter 39);
- (3) Products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color (chapter 39);
- (4) Fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments (usually Chapters 50 to 55, 58 or 60);
- (5) Plates, sheets or strip of cellular plastics, combined with textile fabric, where the textile fabric is merely present for reinforcing purposes (Chapter 39); or
- (6) Textile products of heading 5811.

The subject material seems to be described, at least in part, in exemption 5 above. We note however that the nature of the material (woven fabric, cellular plastics, flock) is not described in Note 2(a) above. Although the woven drapery fabric is combined with a sheet of cellular plastics, the sheet is covered with flock. The flock serves as part of the covering or coating material of the finished fabric.

Heading 5907 covers textile fabrics that have been impregnated, coated or covered, with materials other than plastics or rubber, provided the impregnation, coating or covering can be seen with the naked eye.

The ENs to Heading 5907, HTSUS, specifically lists flocked fabrics stating:

The fabrics covered here include:

(G) Fabric, the surface of which is coated with glue (rubber glue or other), plastics, rubber or other materials and sprinkled with a fine layer of other materials such as:

(1) Textile flock or dust to produce imitation suedes. . . .

The blackout drapery at issue is constructed of a woven fabric, covered with a cellular plastic, which is itself covered on the outside surface with cotton flocking fibers.

The blackout drapery fabric therefore meets the description of a textile fabric otherwise impregnated, covered or coated of Heading 5907, HTSUS. Accordingly, the blackout drapery fabric is classified as a fabric under Heading 5907, HTSUS. We note that as the textile and plastic combination is found to be classifiable in Chapter 59, it is excluded from classification in Chapter 39.

This ruling is consistent with other rulings in which “three flocked” blackout liner materials for use in the manufacture of draperies have been classified in heading 5907, HTSUSA, and in which a foamed PVC jacket shell covered with textile flock was determined to be of a fabric of 5907, HTSUSA. HQ 961390, April 19, 2001; NY G88375, dated March 27, 2001.

The final step in the analysis requires a determination as to whether the blackout drapery fabric is appropriately classified under 5907.00.60, HTSUSA, which provides for “Textile fabrics otherwise impregnated, coated or covered . . . Of man-made fibers” or under subheading 5907.00.80, HTSUSA, which provides for “Textile fabrics otherwise impregnated, coated or covered . . . Other”.

Subheading Note 2(A) to Section XI of the HTSUSA states the following:

Products of chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of chapters 50 to 55 or of heading 5809 consisting of the same textile materials.

Subheading Note 2(B) to Section XI of the HTSUSA states in relevant part that for application of Note 2(A):

(a) Where appropriate, only the part which determines the classification under general interpretative rule 3 shall be taken into account;

In the instant case, it is the fabric component of the blackout drapery that determines its classification, not the coating or the flocking. Accordingly, in determining the appropriate subheading we evaluate only the fabric component.

Note 2(A) to Section XI reads in relevant part:

Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and 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.

\* \* \*

As the textile component of the blackout drapery is 70 percent polyester and 30 percent cotton, it is properly classifiable in subheading 5907.00.6000, HTSUSA, which provides for "Textile fabrics otherwise impregnated, coated or covered; painted canvas being theatrical scenery, studio back-cloths or the like: Other: Of man-made fibers."

**HOLDING:**

HQ 965343, dated July 30, 2002 is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

The blackout drapery fabric is classifiable in subheading 5907.00.6000, HTSUS, which provides for "Textile fabrics otherwise impregnated, coated or covered; painted canvas being theatrical scenery, studio back-cloths or the like: Other: Of man-made fibers."

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial Rulings Division.*