Bureau of Customs and Border Protection

CBP Decisions

DEPARTMENT OF THE TREASURY

19 CFR PARTS 10, 163 and 178

(CBP Dec. 06–21)

RIN 1505–AB37

IMPLEMENTATION OF THE ANDEAN TRADE PROMOTION AND DRUG ERADICATION ACT

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

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, interim amendments to the Customs and Border Protection (CBP) Regulations which were published in the **Federal Register** on March 25, 2003, as T.D. 03–16, to implement the trade benefit provisions for Andean countries contained in Title XXXI of the Trade Act of 2002. The trade benefits under Title XXXI, also referred to as the Andean Trade Promotion and Drug Eradication Act (the ATPDEA), apply to Andean countries specifically designated by the President for ATPDEA purposes. The ATPDEA trade benefits involve the entry of specific apparel and other textile articles free of duty and free of any quantitative restrictions, limitations, or consultation levels; the extension of duty-free treatment to specified non-textile articles normally excluded from duty-free treatment under the Andean Trade Preference Act (ATPA) program if the President finds those articles to be not import-sensitive in the context of the ATPDEA; and the entry of certain imports of tuna free of duty and free of any quantitative restrictions. The regulatory amendments adopted as a final rule in this document reflect and clarify the statutory standards for the trade benefits under the ATPDEA and also include specific documentary, procedural and other related requirements that must be met in order to obtain those benefits.

DATES: This final rule is effective on September 6, 2006.

FOR FURTHER INFORMATION CONTACT:

Operational issues regarding textiles: Robert Abels, Office of Field Operations (202–344–1959).

Other operational issues: Lori Whitehurst, Office of Field Operations (202–344–2722).

Legal issues: Cynthia Reese, Office of Regulations and Rulings (202–572–8812).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Andean Trade Promotion and Drug Eradication Act

On August 6, 2002, the President signed into law the Trade Act of 2002 (the "Act"), Public Law 107–210, 116 Stat. 933. Title XXXI of the Act concerns trade benefits for Andean countries, is referred to in the Act as the "Andean Trade Promotion and Drug Eradication Act" (the "ATPDEA"), and consists of sections 3101 through 3108. This document specifically concerns the trade benefit provisions of section 3103 of the Act which is headed "articles eligible for preferential treatment."

Subsection (a) of section 3103 of the Act amends section 204 of the Andean Trade Preference Act (the ATPA, codified at 19 U.S.C. 3201–3206). The ATPA is a duty preference program that applies to exports from those Andean region countries that have been designated by the President as program beneficiaries. The origin and related rules for eligibility for duty-free treatment under the ATPA are similar to those under the older Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI statute, codified at 19 U.S.C. 2701–2707). As in the case of the CBI, all articles are eligible for duty-free treatment under the ATPA (that is, they do not have to be specially designated as eligible by the President) except those articles that are specifically excluded under the statute.

The changes to section 204 of the ATPA made by subsection (a) of section 3103 of the Act involve the following: (1) the removal of section 204(c) which provided for the application of reduced duty rates (rather than duty-free treatment) for certain handbags, luggage, flat goods, work gloves, and leather wearing apparel, with a consequential redesignation of subsections (d) through (g) as (c) through (f), respectively; and (2) a revision of section 204(b). Prior to the amendment effected by subsection (a) of section 3103 of the Act, section 204(b) of the ATPA was headed "exceptions to duty-free treatment"

and consisted only of a list of eight specific products or groups of products excluded from ATPA duty-free treatment.

As a result of the amendment made by subsection (a) of section 3103 of the Act, section 204(b) of the ATPA now is headed "exceptions and special rules" and consists of six principal paragraphs. These six paragraphs are discussed below.

Paragraphs (1) and (2): Articles that are not import-sensitive and excluded articles

Paragraph (1) of amended section 204(b) is headed "certain articles that are not import-sensitive" and provides that the President may proclaim duty-free treatment under the ATPA for any article described in subparagraph (A), (B), (C), or (D) that is the growth, product, or manufacture of an ATPDEA beneficiary country, that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country, and that meets the requirements of section 204, if the President determines that the article is not import-sensitive in the context of imports from ATPDEA beneficiary countries. Subparagraphs (A), (B), (C), and (D) cover, respectively:

1. Footwear not designated at the time of the effective date of the ATPA (that is, December 4, 1991) as eligible articles for the purpose of the Generalized System of Preferences (the GSP, Title V of the Trade Act of 1974, codified at 19 U.S.C. 2461–2467);

2. Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the Harmonized Tariff Schedule of the United States (HTSUS);

3. Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

4. Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the GSP.

Paragraph (2) of amended section 204(b) is headed "exclusions" and provides that, subject to paragraph (3), duty-free treatment under the ATPA may not be extended to the following:

1. Textile and apparel articles which were not eligible articles for purposes of the ATPA on January 1, 1994, as the ATPA was in effect on that date;

2. Rum and tafia classified in subheading 2208.40 of the HTSUS;

3. Sugars, syrups, and sugar-containing products subject to over-quota duty rates under applicable tariff-rate quotas; and

4. Tuna prepared or preserved in any manner in airtight containers, except as provided in paragraph (4).

The effect of paragraphs (1) and (2) is to divide the former section 204(b) list of eight types of products excluded from ATPA duty-free

treatment into two groups of four each. The four types of products covered by paragraph (1) would no longer be excluded from ATPA duty-free treatment but rather would be eligible for that treatment, provided that the President makes the appropriate negative import sensitivity determination. For these products (which include the handbags, luggage, flat goods, work gloves, and leather wearing apparel to which reduced duty rates previously applied under removed section 204(c)), the country of origin and value-content and related requirements under section 204(a) of the ATPA and the regulations thereunder would apply. The four types of products covered by paragraph (2) would remain as exclusions from duty-free treatment except as otherwise provided in paragraph (3) in the case of certain apparel and textile articles and paragraph (4) in the case of certain tuna products, and the exclusion in the case of sugar and sugar products has been reworded to refer to tariff-rate quota applicability rather than HTSUS classification. Paragraphs (3) through (6) of amended section 204(b), as discussed below, are entirely new provisions.

Paragraph (3): Preferential treatment of textile articles

Paragraph (3) of amended section 204(b) is headed "apparel articles and certain textile articles." Paragraph (3)(A) provides that apparel articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country shall enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels, but only if those articles are described in subparagraph (B), which states that the apparel articles referred to in subparagraph (A) are the following:

1. Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or the United States, or both, exclusively from any one or any combination of the following [clause (i)]:

a. Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States). Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are knit fabrics, is carried out in the United States. Apparel articles shall qualify under this subclause only if all dyeing, printing, and finishing of the fabrics from which the articles are assembled, if the fabrics are woven fabrics, is carried out in the United States [subclause (I)];

b. Fabrics or fabric components formed or components knit-to-shape, in one or more ATPDEA beneficiary countries, from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are

classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, or vicuña [subclause (II)];

c. Fabrics or yarns, to the extent that apparel articles of those fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabrics or yarns, under Annex 401 of the North American Free Trade Agreement (NAFTA) [subclause (III)]; and

d. Fabrics or yarns, to the extent that the President has determined that the fabrics or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the treatment provided under clause (i)(III) [clause (ii)];

2. Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed or from components knit-to-shape in one or more ATPDEA beneficiary countries from yarns wholly formed in the United States or one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), whether or not the apparel articles are also made from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i) (unless the apparel articles are made exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in clause (i)). For these articles, preferential treatment starts on October 1, 2002, and extends for each of the four succeeding 1-year periods, subject to the application of annual quantitative limits expressed in square meter equivalents and with an equal percentage increase in the limit for each succeeding year [clause (iii)];

3. A handloomed, handmade, or folklore textile or apparel article of an ATPDEA beneficiary country that the President and representatives of the ATPDEA beneficiary country concerned mutually agree upon as being a handloomed, handmade, or folklore good of a kind described in section 2.3(a), (b), or (c) or Appendix 3.1.B.11 of Annex 300–B of the NAFTA and that is certified as such by the competent authority of the beneficiary country [clause (iv)]; and

4. Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or one or more ATPDEA beneficiary countries, or both, but excluding articles entered under clause (i), (ii), (iii), or (iv) [clause (v)(I)]. However, during each of four 1-year periods starting on October 1, 2003, the articles in question are eligible for preferential treatment under paragraph (3) only if the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that are used in the production of all such articles of a producer or an entity controlling production that are entered and eligible under clause (v)(I) during the preceding 1-year period is at least 75 percent of the

aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all such articles of that producer or entity that are entered and eligible under clause (v)(I) during the preceding 1-year period [clause (v)(II)]; the 75 percent standard rises to 85 percent for a producer or entity controlling production whose articles are found by Customs and Border Protection (CBP) to have not met the clause (v)(II) 75 percent standard in the preceding year [clause (v)(III)].

In addition to the articles described above, paragraph (3)(B) provides for preferential treatment of the following non-apparel textile articles:

1. Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS [clause (vii)(I)]; and

2. Textile luggage assembled from fabric cut in an ATPDEA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States [clause (vii)(II)].

Clause (vi) under paragraph (3) sets forth special rules that apply for purposes of determining the eligibility of articles for preferential treatment under paragraph (3). These special rules are as follows:

1. Clause (vi)(I) sets forth a rule regarding the treatment of findings and trimmings. It provides that an article otherwise eligible for preferential treatment under paragraph (3) will not be ineligible for that treatment because the article contains findings or trimmings of foreign origin, if those findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. This provision specifies the following as examples of findings and trimmings: sewing thread, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, elastic strips, zippers (including zipper tapes), and labels.

2. Clause (vi)(II) sets forth a rule regarding the treatment of specific interlinings, that is, a chest type plate, "hymo" piece, or "sleeve header," of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments. Under this rule, an article otherwise eligible for preferential treatment under paragraph (3) will not be ineligible for that treatment because the article contains interlinings of foreign origin, if the value of those interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. This provision also provides for the termination of this treatment of interlinings if the President makes a determination that United States manufacturers are producing those interlinings in the United States in commercial quantities.

3. Clause (vi)(III) sets forth a de minimis rule which provides that an article that would otherwise be ineligible for preferential treatment under paragraph (3) because the article contains yarns not

wholly formed in the United States or in one or more ATPDEA beneficiary countries will not be ineligible for that treatment if the total weight of all those yarns is not more than 7 percent of the total weight of the good.

4. Finally, clause (vi)(IV) sets forth a special origin rule that provides that an article otherwise eligible for preferential treatment under clause (i) or clause (iii) will not be ineligible for that treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

Paragraph (4): Preferential treatment of tuna

Paragraph (4) of amended section 204(b) concerns the preferential treatment of tuna. Paragraph (4)(A) provides for the entry in the United States, free of duty and free of any quantitative restrictions, of tuna that is harvested by United States vessels or ATPDEA beneficiary country vessels, that is prepared or preserved in any manner, in an ATPDEA beneficiary country, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kilograms each, and that is imported directly into the customs territory of the United States from an ATPDEA beneficiary country. Paragraph (4)(B)(i) has been amended by the Miscellaneous Trade and Technical Corrections Act of 2004 to define a "United States vessel" for purposes of paragraph (4)(A) as a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code [paragraph (4)(B)(i)(I)] or in the case of a vessel without a fishery endorsement, a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988 [paragraph (4)(B)(i)(II)]. Paragraph (4)(B)(ii) defines an "ATPDEA vessel" for purposes of paragraph (4)(A) as a vessel (1) which is registered or recorded in an ATPDEA beneficiary country, (2) which sails under the flag of an ATPDEA beneficiary country, (3) which is at least 75 percent owned by nationals of an ATPDEA beneficiary country or by a company having its principal place of business in an ATPDEA beneficiary country, of which the manager or managers, chairman of the board of directors or of the supervisory board, and the majority of the members of those boards are nationals of an ATPDEA beneficiary country and of which, in the case of a company, at least 50 percent of the capital is owned by an ATPDEA beneficiary country or by public bodies or nationals of an ATPDEA beneficiary country, (4) of which the master and officers are nationals of

an ATPDEA beneficiary country, and (5) of which at least 75 percent of the crew are nationals of an ATPDEA beneficiary country.

Paragraph (5): Customs procedures

Paragraph (5) of amended section 204(b) is entitled "Customs procedures" and sets forth regulatory standards for purposes of preferential treatment under paragraph (1), (3), or (4). It includes provisions relating to import procedures, prescribes a specific factual determination that the President must make regarding the implementation of certain procedures and requirements by each ATPDEA beneficiary country, and sets forth the responsibility of CBP regarding the study of, and reporting to Congress on, cooperative and other actions taken by each ATPDEA beneficiary country to prevent transshipment and circumvention in the case of textile and apparel goods. The specific provisions under paragraph (5) that require regulatory treatment in this document are the following:

1. Paragraph (5)(A)(i) provides that any importer that claims preferential treatment under paragraph (1), (3), or (4) must comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury. The NAFTA provision referred to in paragraph (5)(A)(i) concerns the use of a Certificate of Origin and specifically requires that the importer (1) make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originating good, (2) have the Certificate in its possession at the time the declaration is made, (3) provide the Certificate to CBP on request, and (4) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

2. Paragraph (5)(B) provides that the Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (5)(A)(i) will not be required in the case of an article imported under paragraph (1), (3), or (4) if that Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico. Article 503 of the NAFTA sets forth, with one general exception, three specific circumstances in which a NAFTA country may not require a Certificate of Origin.

Paragraph (6): Definitions

Paragraph (6) of amended section 204(b) sets forth a number of definitions that apply for purposes of section 204(b). These definitions include, in paragraph (6)(B), a definition of "ATPDEA beneficiary country" as any "beneficiary country," as defined in section 203(a)(1) of the ATPA, which the President designates as an

ATPDEA beneficiary country, taking into account the criteria contained in sections 203(c) and (d) and other appropriate criteria, including those specified under new paragraph (6)(B) of amended section 204(b).

On October 31, 2002, the President signed Proclamation 7616 (published in the **Federal Register** at 67 FR 67283 on November 5, 2002) to implement the new trade benefit provisions of section 3103 of the Act. The Annex to that Proclamation set forth a number of modifications to the HTSUS to accommodate the ATPDEA program, and those HTSUS changes were also the subject of a technical corrections document prepared by the Office of the United States Trade Representative and published in the **Federal Register** (67 FR 79954) on December 31, 2002.

Interim Regulatory Amendments in T.D. 03–16

On March 25, 2003, CBP published in the **Federal Register** (68 FR 14478) as T.D. 03–16 (corrected at 68 FR 67338 on December 1, 2003), an interim rule document setting forth amendments to the CBP Regulations that implement the trade benefit provisions for Andean countries. The regulatory changes in T.D. 03–16 implemented the new trade benefit provisions and conformed the ATPA implementing regulations to those statutory changes and involved, among other things, the following: (1) the addition of §§ 10.241 through 10.248 to implement those apparel and other textile article preferential treatment provisions within paragraphs (3), (5) and (6) of amended section 204(b) of the ATPA statute that relate to U.S. import procedures; (2) the addition of §§ 10.251 through 10.257 to implement those non-textile preferential treatment provisions within paragraphs (1), (4), (5) and (6) of amended section 204(b) of the ATPA statute that relate to U.S. import procedures; (3) the removal of the reference to § 10.208 in the introductory text of § 10.202; (4) the revision of § 10.201 to reflect the removal of that reduced-duty provision and to refer to §§ 10.241–10.248 and 10.251–10.257; (5) the amendment of paragraph (b) of § 10.202 to recast the list of articles excluded from the ATPA to reflect the terms of paragraph (2) of amended section 204(b); and (6) the amendment of Part 163 of the CBP Regulations (19 CFR Part 163) by adding to the list of entry records in the Appendix (the interim "(a)(1)(A) list") references to the ATPDEA Textile Certificate of Origin prescribed under § 10.246, the ATPDEA Declaration of Compliance for brassieres prescribed under § 10.248, and the ATPDEA Certificate of Origin for tuna and other non-textile articles prescribed under § 10.256. For a complete section-by-section discussion of each regulatory change, see T.D. 03–16. Please note that on December 1, 2003, two correction documents pertaining to T.D. 03–16 were published in the **Federal Register** (68 FR 67338).

Although the interim regulatory amendments were promulgated without prior public notice and comment procedures and took effect on March 25, 2003, T.D. 03–16 nevertheless provided for the submission of public comments which would be considered before adoption of the interim regulations as a final rule. The prescribed public comment period closed on May 27, 2003. A discussion of the comments received by CBP is set forth below.

DISCUSSION OF COMMENTS

A total of 6 commenters responded to the solicitation of public comments in the March 25, 2003, interim rule document referred to above. All of the comments received involved the regulatory provisions for the preferential treatment of apparel and other textile articles.

Finishing Processes

Comment:

One commenter agrees with the decision to have a single provision in the regulations, § 10.243(b), address dyeing and finishing requirements contained in the ATPDEA. Further, the commenter agrees that "the restrictions (requiring the operations be performed in the United States) only apply to the dyeing, printing, and finishing of knit or woven U.S. fabrics, or the U.S. fabric components formed from those fabrics, of garments described only in § 10.243(a)(1) or (a)(2)." Based on the language in the provision, the commenter also believes that U.S. knit-to-shape components are not subject to the dyeing, printing, and finishing restriction which is consistent with CBP's position that knit-to-shape components are not fabrics.

The commenter disagrees, however, with CBP's conclusion that U.S. knit or woven fabrics or fabric components made from such U.S. fabrics that are used in apparel provided for in § 10.243(a)(7) are also subject to the requirement that the knit or woven fabric, or components made from such fabric be dyed, printed or finished in the United States. The commenter believes "that such U.S. fabrics or components, used in conjunction with (a)(7) DO NOT face a dyeing, printing and finishing restriction." The commenter believes CBP has misread the statute and reached an erroneous conclusion.

In making the argument that CBP has misread the statute, the commenter refers to a "hybrid provision" in the statute, cites to the language in § 204(b)(3)(B)(iii)(I), and states the provision "permits the inclusion of 'fabrics, fabric components formed, or components knit to shape described in clause (i).'" The commenter maintains that the requirement in subclause (i)(I) that U.S. knit or woven fabric and fabric components from such fabric be dyed, printed, or finished in the United States applies only with regard to apparel articles quali-

fying under subclause (i)(I). The commenter argues that the dyeing, printing, and finishing requirement does not apply to U.S. knit and woven fabric or fabric components when these inputs are used in apparel which qualifies for preferential treatment under another provision of the ATPDEA, namely apparel described in § 10.243(a)(7).

The commenter points to "common commercial practice" to argue that this dyeing, printing, and finishing requirement would not apply to U.S. inputs when used in conjunction with regional inputs as "the dyeing, printing, and finishing operations all need to occur in the same location to ensure consistency for all the components of the garment." The commenter argues that CBP's interpretation which applies the dyeing, printing and finishing requirement to knit and woven U.S. fabric and fabric components will result in apparel companies choosing not to buy U.S. inputs for hybrid U.S./regional garments.

CBP's Response:

The commenter is correct that CBP does not view the dyeing, printing, and finishing requirement to extend to knit-to-shape components as such components are not considered "fabric" but are components created directly from yarn. CBP disagrees with the commenter's reading of the statute to limit the dyeing, printing, and finishing requirement contained in subclause (i)(I) to apparel articles qualifying for preferential treatment under that subclause only. CBP views the dyeing, printing, and finishing requirement contained in subclause (i)(I) as part of the description of the fabric, and fabric components formed from such fabric, provided for under that subclause. Consequently, the language in subclause (iii)(I) which allows for the use of fabrics, fabric components formed, or components knit-to-shape described in clause (i) is interpreted by CBP to include the dyeing, printing, and finishing requirement contained in subclause (i)(I) with regard to fabrics or fabric components wholly formed from fabric which are described in that subclause. In the Conference Report to the Trade Act of 2002, Report No. 107–624, at page 251, it is clearly stated with regard to the dyeing, finishing and printing requirement: "Apparel made of U.S. knit or woven fabric assembled in an Andean beneficiary country qualifies for benefits only if the U.S. knit or woven fabric is dyed and finished in the United States." CBP's interpretation of the dyeing, printing and finishing requirement as part of the descriptive of the "inputs" provided for in subclause (i)(I) carries out the intent of Congress to ensure that U.S. formed fabric and fabric components are finished in the United States. To interpret the provision, as suggested by the commenter (to apply the requirement only in the case when all the fabric and fabric components in an apparel article are wholly formed in the United States of yarns wholly formed in the United States or one or more ATPDEA beneficiary countries) would mean that the introduction of

any other fabric or fabric component within the apparel article (provided the fabric or fabric component is described within one of the other provisions of the ATPDEA) would negate the requirement regarding U.S. finishing so specifically stated by Congress in this Act and obstruct their intent as stated in the Conference Report previously cited.

As to the commenter's argument that "common commercial practice" dictates that the requirement to dye, print, and finish U.S. formed fabric (and fabric components from such fabric) in the United States does not apply when U.S. "inputs" are combined with regional fabrics, we disagree. We agree that normally fabric for apparel production is dyed by lot and a manufacturer wants to use fabric from the same dye lot in the production of an apparel article, assuming the apparel article is constructed of one fabric. However, if fabrics from the United States and the region are being combined in the production of apparel, it is likely the fabrics will not be exactly the same. Dyes, inks and finishes will affect different fabrics of different constructions and different fiber compositions differently. Therefore, CBP rejects the proposition that "common commercial practice" dictates an interpretation of the dyeing, printing, and finishing requirement for U.S. formed fabric which is contrary to the stated intent of Congress.

Comment:

A commenter noted that the interim regulations do not provide a definition of the terms "dyeing," "printing," and "finishing." The commenter would like CBP to publish definitions of these terms so as to clarify the requirements with regard to these processes.

CBP's Response:

As technological advances may occur with regard to dyeing, printing and finishing processes, CBP will not attempt to provide a finite definition of these terms because the definition may not encompass such unforeseen advances. It is prudent to rely on the common and commercial meanings of these terms which may change over time with scientific and technological advances. Questions of whether a particular process constitutes a dyeing, printing, or finishing process will continue to be addressed on a case-by-case basis.

Interlinings

Comment:

There is no clear translation into Spanish of the terms "chest type plate," "hymo piece," and "sleeve header." Assistance in this regard is requested. In addition, the same commenter requests that CBP not object to the use of other interlinings originating in third countries since the type of products exported by Peru use a minimum amount of such interlinings. Finally, the commenter asks if the use of inter-

linings originating in a country other than the United States or a beneficiary country and that is not one of the three types mentioned above, will preclude preferential treatment under the ATPDEA even though such interlinings, along with other accessories, represent less than 25% of the cost of the garment.

CBP's Response:

CBP does not have the authority to allow the use of foreign (third country) interlinings beyond the three named and described in the ATPDEA. The use of other foreign interlinings in apparel articles, regardless of the amount, will preclude preferential treatment under the ATPDEA.

With regard to the lack of a clear translation into Spanish for the terms "chest type plate," "hymo piece," and "sleeve header," CBP is able to offer some descriptive information about these interlinings, which are used in the production of suit and suit-type jackets, which may be helpful when translated into Spanish.

A "sleeve header," which may also be referred to as a "sleevehead interlining," is an interlining piece sewn between the shell fabric and lining fabric along the outside shoulder seam where the sleeve joins the body of the garment. This interlining provides fullness along the seam and enhances the appearance of a jacket at the point where the sleeve meets the shoulder. See Headquarters Ruling Letter (HQ) 559552, dated February 14, 1996, and HQ 966510, dated August 27, 2003.

A "chest type plate" may also be referred to as a "chest piece." This interlining piece is placed in the chest area of a jacket for strength and shape. It serves to stabilize the jacket, enhancing it's appearance. See HQ 966510; <www.actk.nl/>; and <www.resil.com/dictionary>.

The term "hymo" is defined as "Fabric of mohair and linen, used in tailoring to reinforce body of a coat." See A Dictionary of Costume and Fashion, Historic and Modern, by Mary Brooks Picken, at 181 (Dover Publications, Inc., 1985). Similarly, from Fairchild's Dictionary of Textiles, edited by Dr. Isabel B. Wingate, at 289, "hymo" is defined as "A fabric made of mohair and linen. Used in tailoring to reinforce the body section of a coat." (Fairchild Publications, Inc., 1970). Based on these definitions, a "hymo piece" may be considered a type of "chest piece" or "chest type plate." The distinction between these two types of interlinings is that the "hymo piece" is constructed specifically of fabric of mohair and linen.

Short Supply

Comment:

With regard to the designation of additional short supply fabrics and yarns, the commenter asks what criteria will be used by the

President to determine that a fabric or yarn is scarce in the U.S. market, and when such determinations will be published in the **Federal Register**.

CBP's Response:

Congress authorized the President to proclaim additional fabrics and yarns as eligible for preferential treatment under clause (i)(III) of Section 3103(b)(3)(B) of the ATPDEA. This authority, provided in section 3103(b)(3)(B)(ii), has been delegated to the Committee for the Implementation of Textile Agreements (CITA). See "Notice of Redelegation of Authority and Further Assignment of Functions" which was published on December 2, 2002 (67 FR 71606). Questions regarding designations of fabrics or yarns as commercially unavailable, such as the criteria for making such determinations and the procedures involved, should be directed to the Chairman, Committee for the Implementation of Textile Agreements, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Information on "commercial availability" requests under the ATPDEA may be found at the web site for the Office of Textiles and Apparel, Department of Commerce, at www.otexa.ita.doc.gov.

Comment:

A commenter notes with appreciation a Textile Book Transmittal (TBT) publication by CBP (which is available on the CBP website), TBT–03–013 "List of Short Supply Fabrics for Trade Agreements," and the use of the term "short supply" by CBP; the commenter believes CBP's use of the term "reflects both an accurate description of this provision and the way the trade views this process." However, the commenter takes issue with the language included in the TBT describing the general treatment for apparel produced from short supply fabrics or yarns designated by the Committee for the Implementation of Textile Agreements (CITA). The language at issue indicates that apparel incorporating short supply fabrics designated by CITA must use fabrics wholly formed in the United States from yarns wholly formed in the United States for all other fabric components in the garment for which the short supply fabric is not used.

The commenter cites to the language in the Conference Report for the Trade Act of 2002 (H. Rept 107–624) which clarifies congressional intent regarding the treatment of short supply inputs in apparel qualifying for preferential treatment under the trade program. The commenter refers to this report language to assert that when the short supply fabric determines the essential character of an apparel article, the remaining fabrics used in the apparel article may originate from anywhere; and, when the short supply fabric does not impart the essential character of an apparel article, it will not disqualify the apparel article from qualifying for preferential treatment

under the ATPDEA. The use of the same short supply provision in the AGOA and CBTPA leads the commenter to conclude that designated short supply fabrics and yarns should be extended the same treatment, *i.e.*, consideration of only the fabric or yarn that determines the essential character of the apparel article.

The commenter notes that the interim regulations on the ATPDEA are silent on how CBP "expects to treat garments entered claiming a short supply fabric or yarn designated by CITA."

CBP's Response:

In Section 3103(b)(3)(B)(ii) of the ATPDEA, the President is authorized to designate additional fabrics and yarns as in "short supply" and thus allowable in the construction of apparel articles under the ATPDEA regardless of the origin of the fabrics or yarns. This authority to designate additional fabrics and yarns has been delegated to CITA pursuant to Executive Order No. 13277 (67 FR 70305) and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions (67 FR 71606).

The tariff provision which implements this provision of the ATPDEA is subheading 9821.11.10, HTSUS, which provides for: "Apparel articles sewn or otherwise assembled in one or more such countries, or the United States, or both, exclusively from any of the following: Fabrics or yarns designated by the appropriate U.S. government authority in the **Federal Register** as fabrics or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner, under any terms as such authority may provide."

The interim regulations were silent on how CBP will treat apparel articles under § 10.243(a)(1)(iv) of the regulations which pertains to apparel articles provided for in subheading 9821.11.10, HTSUS, because the authority to designate the fabrics or yarns allowed under this provision and the authority to designate any terms or requirements to be applied to the allowance of these fabrics or yarns in eligible apparel resides with CITA, pursuant to the language of the tariff. CBP will follow the language of the designation notices issued by CITA (which will appear in the **Federal Register**) in applying this provision to apparel articles as CITA is the designated U.S. government authority to make such determinations.

Comment:

A commenter objects to the exclusion of brassieres from eligibility for preferential treatment under § 10.243 (a)(1)(iii). The commenter claims that in the CBTPA changes contained in Section 3107 of the Trade Act of 2002 and provisions of the ATPDEA, Congress included language that specifically envisions brassieres being imported under the respective short supply provisions in each of those two trade preference programs. This statutory language stands in sharp con-

trast to CBP's view that brassieres are not eligible for short supply treatment in those trade programs.

CBP's Response:

The commenter argues that in both CBTPA and ATPDEA legislative changes made by Congress, specifically listing exceptions for certain provisions, Congress clearly envisioned brassieres being imported under these respective provisions, including the short supply provisions. In CBP's opinion, the specific exception language added to both the ATPDEA in Section 3103(b)(3)(B)(v)(I) and the CBTPA in Section 3107(a)(5)(iv) does not indicate that brasseries should therefore, be eligible under any or all of these excepted provisions. This clarifying language merely states that in determining eligibility requirements under the cited provisions, any brassieres classified in one of the exceptions would not be included in determining the eligibility under Section 3103(b)(3)(B)(v)(I) and Section 3107(a)(5)(iv). In fact, one of the exceptions listed in both Section 3103(b)(3)(B)(v)(I) of the ATPDEA and Section 3107(a)(5)(iv) of the CBTPA is a provision covering "Handloomed, Handmade, and Folklore Articles". CBP is not aware of any brassieres that could be claimed under this provision and yet this is one of the exceptions listed. CBP believes that the Congress did not intend the listing of these exceptions to mean that brassieres would be classifiable in all these provisions.

Brassieres

Comment:

A commenter is concerned that § 10.243(b)(2) requires brassieres to be produced and entered during the same year in order to qualify for inclusion in the calculations of a year's shipments in order to determine eligibility of brassieres for preferential treatment in the following year. The commenter points to Example 6 in the interim regulations as illustrating this point. The commenter strongly disagrees with requiring brassieres to be produced and entered in the same year for the purpose of determining eligibility and asserts that the language adopted by Congress in drafting this provision of the ATPDEA requires that the calculation to determine eligibility be performed on brassieres "'that are entered and eligible during the preceding 1-year period,' regardless of when those actual brassieres are produced."

CBP's Response:

The commenter has misread Example 6 in the interim regulations. A proper reading of the example reveals that it actually supports the view of the commenter that in determining the brassieres to be included in calculating the aggregate value of the fabric formed in the United States which is present in brassieres in a 1-year period (October 1 to September 30) for the purpose of determining eligibility of

brassieres for preferential treatment under this provision of the ATPDEA in the subsequent 1-year period, one includes brassieres which are entered and eligible during the preceding 1-year period and the year of production is not a determinative factor. In Example 6, brassieres not meeting the minimum 75 percent fabric standard are shipped to the United States in February. A second shipment of brassieres, meeting the 75 percent fabric standard and actually exceeding the 85 percent standard, is shipped in June. If these two shipments are entered in the same 1-year period year, the aggregate value would meet the 75 percent standard. However, the February shipment is entered for consumption on March 1 of the same calendar year; the June shipment is not entered for consumption until November 1 of that calendar year. Although entered for consumption in the same calendar year, these shipments were entered for consumption in different eligibility years which run from October 1 to September 30. Therefore, a valid declaration of compliance cannot be prepared for the shipment entered in March as it failed to meet the 75 percent standard; however, a valid declaration may be prepared for the shipment entered in November since it exceeded the 85 percent standard which would be applicable for brassieres entered in that year because of the failure to meet the 75 percent standard in the preceding year. The year of production of the brassieres is not a consideration in the example.

Scope of the Term "Elastic Strips"

Comment:

Three commenters submitted observations concerning the scope of the term "elastic strips" in the list of examples of "findings and trimmings" set forth in § 10.243(c)(1)(A). [The ATPDEA includes a special rule that permits the use of foreign findings and trimmings in producing eligible textile and apparel articles, provided the value of those findings and trimmings does not exceed 25% of the cost of the components of the assembled article.] The commenters noted that the term "elastic strips" is not defined in the interim regulations and therefore the regulations provide manufacturers and importers little guidance regarding the scope of the term. All three commenters urged CBP to narrowly construe the term so that it excludes most, if not all, narrow elastic fabrics. The commenters made the following specific points in support of their position:

1. The exception for foreign findings and trimmings under the ATPDEA "was necessarily intended to be of a restrictive nature, as the intent of the statute was to ensure that all fabric components be formed [in the] U.S. or ATPDEA region."

2. If the exception for foreign "elastic strips" is interpreted as including narrow elastic fabrics, an entire segment of the U.S. textile industry (the weavers and knitters of narrow elastic fabric) will be adversely affected as it will receive absolutely no benefit from the

fabric origin requirements of the ATPDEA. In passing this statute, Congress did not intend to exclude from its benefits all U.S. producers of narrow elastic fabrics.

3. In the textile industry, the word "strip" is used to describe cut (slit) pieces of flat rubber or other elastic material of a rubber-like consistency throughout. Narrow elastic fabrics that are essential components are not normally considered elastic strips.

4. CBP rulings support the view that most fabric components "that serve a purpose" are not findings. See HQ 559522 dated February 14, 1996. In addition, CBP rulings have generally not considered fabric components to be trimmings.

5. It is noted that the ATPDEA did not replicate language in the Caribbean Basin Trade Partnership Act (CBTPA) limiting "elastic strips" in the findings and trimmings exception to elastic strips of less than one-inch in width and used in the production of brassieres. By omitting this language in the ATPDEA, Congress intended to exclude elastic fabric brassiere straps from the findings and trimmings exception. This is consistent with the belief that Congress intended to exclude from the findings and trimmings exception fabric components, such as waistbands, leg gatherings and brassiere straps, that are essential to the garment and are not primarily decorative.

CBP's Response:

Section 10.243(c)(1)(A) essentially repeats the language found in the statute (amended section 402(b)(B)(vi)(I) of the ATPA) relating to the exception for findings and trimmings and the examples set forth therein. Therefore, CBP acknowledges that the regulation provides no guidance as to what is meant by "elastic strips" in the findings and trimmings rule. However, as further explained below, CBP believes that, generally speaking, determinations regarding the scope of that term should be made on a case-by-case basis through the CBP rulings process.

CBP agrees with the assertion by one commenter that the exception for foreign findings and trimmings in the ATPDEA was necessarily intended to be of a restrictive nature. With few exceptions, the preferential treatment accorded to textile and apparel articles under the ATPDEA, like the treatment accorded to similar articles under the AGOA and CBTPA, is based upon the requirement that all fabric components be formed in the United States or the ATPDEA region. Therefore, CBP believes that the scope of the term "findings and trimmings" should be limited to the specific items set forth as examples in the statute as well as items that are closely analogous to the cited examples.

In response to the argument that Congress did not intend to exclude an entire segment of the U.S. textile industry (producers of narrow elastic fabric) from benefiting from the ATPDEA, CBP notes that it attempts to discern Congressional intent from the specific

wording in the statute as well as the legislative history. In regard to the use of the term "elastic strips" in the ATPDEA, the statute's legislative history sheds no light on how the term should be defined. However, as one commenter pointed out, Congress did not include language limiting the scope of the term "elastic strips" in the "findings and trimmings" rule to elastic strips that are "each less than 1 inch in width and used in the production of brassieres," as it did in the AGOA and CBTPA statutes.

One seemingly inescapable conclusion that can be drawn from the above omission in the ATPDEA is that Congress did not intend that the term "elastic strips" would be subject to the "less than 1 inch in width" brassiere strip limitation. Therefore, in future considerations of whether particular items qualify as "elastic strips" under the "findings and trimmings" exception in the ATPDEA, CBP will not disqualify an item solely because it is an inch or more in width and used in the production of garments other than brassieres.

However, CBP agrees with the assertion by one commenter that, by failing to limit the term "elastic strips" in the ATPDEA to certain narrow elastic brassiere strips, Congress intended to exclude elastic fabric brassiere straps from being considered findings and trimmings under this statute. HQ 562018 dated March 22, 2002, concerned whether the use of foreign-origin ½ inch wide polyurethane strips in the construction of brassieres would disqualify the brassieres from receiving preferential treatment under the CBTPA. CBP concluded initially that the polyurethane strips are outside the scope of the exception for "elastic strips" because the language limiting that exception to certain narrow elastic strips used in the production of brassieres related only to elastic **fabric** strips. CBP then determined in HQ 562018 that the polyurethane strip is not a "finding or trimming" inasmuch as it is not a "supplementary element used to construct the garment, but, rather, is a brassiere strap, a major component of the brassiere." Because the polyurethane strip was neither a textile component nor a "finding or trimming," CBP concluded that the strip's presence in the brassiere would not preclude the article from receiving preferential treatment under the CBTPA. Consistent with HQ 562018, CBP believes that brassiere straps, whether made of fabric or a non-textile material, do not qualify as "findings or trimmings" for purposes of the ATPDEA.

Concerning whether the term "elastic strips" should be construed as encompassing narrow elastic fabrics or only non-textile rubber strips, or both, it is noted that in rulings interpreting "elastic strips" as that term appears in the AGOA and CBTPA, CBP determined that the term encompassed only "narrow elastic **fabric** less than one inch in width used in the production of brassieres." (Emphasis added.) See, for example, HQs 965909 dated January 7, 2003, 562018 dated July 10, 2001, and 966495 dated July 3, 2003. However, the basis for this conclusion was a statement in the legislative

history of the CBTPA indicating that that program was to be administered in a manner consistent with the "Special Access Program" (SAP). A directive issued in connection with the SAP stated that "the foreign origin exception for elastic strips is clarified as limited to narrow elastic **fabric** less than one inch in width used in the production of brassieres only." (Emphasis added.) As previously indicated, the term "elastic strips" in the ATPDEA "findings and trimmings" rule is not limited to strips less than 1 inch in width used in the production of brassieres. Moreover, there is no similar reference in the ATPDEA's legislative history to the SAP. As a result, CBP concludes that the above rulings relating to the AGOA and CBTPA are not controlling with respect to this issue and that "elastic strips" in the ATPDEA should not be construed as encompassing **only** narrow elastic **fabric** strips.

By the same token, CBP cannot agree with the contention that the term "elastic strips" should be construed as encompassing **only** non-textile (e.g., rubber) strips as CBP is not aware of any evidence indicating that Congress intended such a construction. Rather, CBP believes that, in determining whether certain items qualify as "elastic strips" under the ATPDEA, consideration should be given to items consisting of elastic fabric material as well as items consisting of non-textile elastic material.

CBP also does not agree with the argument that elastic fabric strips used in waistbands and leg gatherings are automatically excluded from the "findings and trimmings" exception under the ATPDEA. Previous CBP rulings on the scope of the "findings and trimmings" exception under other preference programs and provisions have defined "findings" as "sewing essentials used in textile goods" and "trimmings" as "decoration or ornamental parts." Rubber tape used to provide secure fittings in the leg and arm openings of garments, such as bathing suits, underwear and sweatpants, have been held to qualify as "findings" under the CBTPA and subheading 9802.00.90, HTSUS. See HQs 966239 dated May 16, 2003, 966317 dated June 9, 2003, and 561868 dated July 10, 2001. By analogy, elastic fabric strips serving the same functions would also qualify as findings under the ATPDEA. Whether elastic fabric strip used in waistbands would also qualify as findings will be determined pursuant to the CBP rulings process.

Comment:

A commenter commends CBP for the inclusion in § 10.243(b)(2) of language "that clarifies that a series of post-assembly finishing operations will not disqualify a garment entered under specific provisions."

CBP's Response:

CBP appreciates the comment.

Certificate of Origin

Comment:

A commenter believes the Certificate of Origin may be further simplified into one form to serve the AGOA, the CBTPA and the ATPDEA as the requirements for all three programs are the same. The commenter also requests that "available upon request" be permitted with regard to information requested on the certificate for thread, fabric and yarn names and addresses.

CBP's Response:

We would certainly be open to any suggestions concerning the simplification of the certificate of origin. However, developing one form to accommodate AGOA, CBTPA and ATPDEA would make the form more complex, especially for the exporter or producer who is required to complete the form and is responsible for ensuring that the information is accurate. A combining of the form could include groupings or requirements that would be in place for AGOA, e.g. knit to shape with 50 percent by more of weight of fine wool that do not exist for CBTPA or ATPDEA.

However with regard to the commenter's second point, CBP will not accept "available upon request" where information is needed on the name and address of the yarn, fabric and thread suppliers. The certificate of origin is not a document that is required for entry purposes. The importer must have it in their possession when making the claim. When CBP requests the certificate of origin all information must be on that form to assist CBP in confirming the accuracy of the claim. CBP does not want to make a second request to see what should have been available when a request was made to see the certificate of origin on the first request.

Comment:

A commenter inquired about reproduction of the Certificates of Origin shown in the **Federal Register** notice.

CBP's Response:

The Textile Certificate of Origin shown in the interim regulations is shown to illustrate the format in which the information should be presented; it is not a form. This format may be reproduced locally.

Handloomed, Hand-made and Folklore Articles

Comment:

A commenter raises questions with regard to the provision of the ATPDEA which provides for handloomed, hand-made, and folklore articles. Specifically, the commenter wants to know how and when certification of such goods will be effectuated, particularly in light of

the fact that Peru already has a system in place for the authorization of export invoices under the "Administrative Agreement of Authorization and Certification of Textile Products" which includes handloomed, hand-made and folklore articles. The commenter inquires as to whether a separate certification is necessary when there already is a certification process in place and whether textile articles other than garments, such as pillows, carpets, covers, and tablecloths will also enjoy preferential treatment.

CBP's Response:

CBP does not have the authority to answer these questions concerning the administration of the "Handloomed, Handmade, and Folklore Articles" provisions under the ATPDEA. These authorities and functions, which were granted to the President under the ATPDEA, were delegated in an Executive Order 13277 to USTR, including the authority to redelegate these authorities and functions. In a notice published in the **Federal Register** on Monday, December 2, 2002, such authorities and functions were assigned to the Secretary of State, the Secretary of the Treasury, the Secretary of Labor, the Secretary of Commerce, and the United States Trade Representative Office. The responsibility to administer this provision lies with the Committee for the Implementation of Textile Agreements (CITA). It is suggested that you contact them directly by writing to the Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, ITA/TD/OTEXA, Room H–3100, 14th and Constitution Avenue, N. W. Washington, D.C. 20230.

CHANGES TO THE REGULATIONS

While there are no changes to the interim regulations made in connection with the public comments, CBP in this final rule document has made a number of other changes to the interim regulatory texts for editorial and clarification purposes. These changes are as follows:

1. In § 10.242, CBP has determined that the definition of "foreign" as set forth in the interim regulations could cause some confusion and might lead to anomalous and unintended results in certain circumstances. That definition (which has relevance only in the context of the findings and trimmings and interlinings provisions of § 10.243(c)) in the interim texts simply read "of a country other than the United States or an ATPDEA beneficiary country." However, because the various textile and apparel articles to which preferential treatment applies are described in § 10.243(a) with reference to specific production processes in the case of yarns, fabrics and components that must take place in the United States or in an ATPDEA beneficiary country or both, more is required than that the yarn or fabric or component be "of" (that is, have its origin in) the United

States or an ATPDEA beneficiary country. For example, § 10.243(a)(1) refers to articles "assembled" in one or more ATPDEA beneficiary countries from "fabric wholly formed and cut" in the United States from "yarns wholly formed" in the United States. A fabric that was wholly formed in the United States but from yarns formed outside the United States would not meet the § 10.243(a)(1) standard and also would not be considered "foreign" under the interim definition because it is "of" (that is, it has its origin in) the United States by virtue of its having been formed in the United States. Therefore, that fabric could not be present in the article under the findings or trimmings or interlinings rule exception; consequently, even if all of the other fabric in the article was wholly formed and cut in the United States from yarns wholly formed in the United States and the article was assembled in an ATPDEA beneficiary country, the assembled article would not qualify for preferential treatment. On the other hand, a fabric formed outside the United States or the ATPDEA region, if used as a finding or trimming or interlining within the 25 percent limit, would not disqualify the article. Thus, under the interim definition of "foreign," U.S. and ATPDEA beneficiary country textile materials could be at a disadvantage vis-a-vis materials from outside the United States and the ATPDEA region, contrary to the overall thrust of the ATPDEA program as discussed in the comment discussion set forth above in this document. CBP believes that the interim definition was appropriate in the case of non-textile findings and trimmings. However, in the case of textile findings and trimmings and interlinings the concept of "foreign" logically only has relevance in the context of an exception to the production standards that apply to articles eligible for preferential treatment. Accordingly, the definition of "foreign" has been replaced by a definition of "foreign origin" to address these concerns.

2. In § 10.242, CBP has added a new definition for the term "self start edge" and modified the definition of "knit-to-shape components" by adding the phrase "that is, the shape or form of the component as it is used in the apparel article, containing at least one self start edge" after the words "specific shape."

3. In § 10.243(b)(1)(i), CBP has added the words "or in one or more ATPDEA beneficiary countries, as described in paragraph (a)(1)(i) of this section" after the phrase "from yarns wholly formed in the United States". This change is being made because of the inadvertent omission of this statutory language in section 3103(b)(3)(B)(i)(I) of the ATPDEA which limits the dyeing, printing, and finishing requirement to certain fabrics.

4. With reference to the findings, trimmings and interlinings provisions under § 10.243(c)(1)(ii), CBP has used an f.o.b. port of exportation basis for determining the "cost" of the components and the "value" of the findings and trimmings and interlinings. However, CBP now believes that the use of an ex-factory standard in lieu of

the f.o.b. port of exportation standard would be more accurate because it eliminates transportation costs from the comparison between the "value" of foreign findings and trimmings and/or foreign interlinings and the "cost" of the components of the assembled article. Therefore, CBP has revised § 10.243(c)(1)(ii) in this final rule to incorporate an ex-factory standard in lieu of the f.o.b. port of exportation standard.

5. With regard to who may sign the textile Certificate of Origin, §§ 10.244(a), 10.244(c)(12), 10.246(b)(2), and 10.254 refer to the exporter (and the exporter's authorized agent in the latter two provisions), but none of these provisions mentions the producer in this specific context. CBP has determined that the producer or the producer's authorized agent having knowledge of the relevant facts should be permitted to sign the Certificate of Origin in addition to the exporter or the exporter's authorized agent. The producer clearly is in the best position to attest to the accuracy of the information set forth in the Certificate. Therefore, §§ 10.244(a), 10.244(c)(12), 10.246(b)(2), 10.254, and 10.256(b)(2) have been changed to provide that the Certificate of Origin must be signed by the exporter or producer or by the exporter's or producer's authorized agent having knowledge of the relevant facts. CBP notes that this change is consistent with changes to the implementing regulations under the Caribbean Basin Trade Partnership Act (CBTPA) and the African Growth and Opportunity Act (AGOA) relating to the textile Certificate of Origin and thus brings uniformity to the three programs in this regard.

6. In § 10.248(b)(2)(ii), Example 5 has been changed to clarify that elastic strips used as brassiere straps are not considered findings or trimmings.

7. In § 10.248(c)(3)(i), CBP has amended blocks 4–6 of the declaration of compliance for brassieres by adding exclusion language regarding findings and trimmings after each reference to fabric(s) for purposes of calculating whether the minimum 75 or 85 percent standard was met. This change is being made because of the inadvertent omission of this language in the interim rule.

8. In addition to those changes already noted above, references to the U.S. Customs Service within the regulatory text in §§ 10.244, 10.245, 10.246, 10.247 and 10.248 have been changed to CBP.

9. In § 10.252, the definition of the term "United States vessel" has been amended to reflect a change made by the Miscellaneous Trade and Technical Corrections Act of 2004 (MTTCA). The MTTCA added to the definition of a "United States vessel" to include the case of a vessel without a fishery endorsement that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988. Accordingly, in § 10.252, the definition of the term "United States vessel" has been amended by adding the phrase "or in the case of a vessel

without a fishery endorsement, a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988" at the end of the sentence.

CONCLUSION

Based on the analysis of comments and the discussion above regarding CBP's further consideration of the interim rule, CBP is adopting as final some of the interim regulations published in T.D. 03–16 and amending certain of those interim provisions.

Concerning §§ 10.241 through 10.248 (provisions concerning textile articles), the following sections have been amended:

1. In § 10.242, the definition of "foreign" has been replaced by a definition of "foreign origin;" a new definition for the term "self start edge" has been added; and the definition of "knit-to-shape components" has been amended;

2. § 10.243(b)(1)(i) is revised by adding the words "or in one or more ATPDEA beneficiary countries, as described in paragraph (a)(1)(i) of this section" after the phrase "from yarns wholly formed in the United States";

2. § 10.243(c)(1)(ii) is revised to incorporate an ex-factory standard in lieu of the f.o.b. port of exportation standard;

3. §§ 10.244(a), 10.244(c)(12), and 10.246(b)(2) have been changed to provide that the Certificate of Origin must be signed by the exporter or producer or by the exporter's or producer's authorized agent having knowledge of the relevant facts;

4. In § 10.248(b)(2)(ii), Example 5 has been changed to clarify that the scope of findings and trimmings with regard to elastic strips does not include elastic strips used as brassiere straps;

5. In § 10.248(c)(3)(ii), blocks 4–6 of the declaration of compliance for brassieres have been amended by adding exclusion language regarding findings and trimmings after each reference to fabric(s); and

6. §§ 10.244, 10.245, 10.246, 10.247 and 10.248 have been amended to change U.S. Customs Service to CBP.

Except as discussed above, interim §§ 10.241 through 10.248 are adopted as final. In view of the multiple changes throughout the textile and apparel regulatory provisions contained in §§ 10.241 through 10.248, those provisions are set forth in their entirety in this final rule document.

Concerning §§ 10.251 through 10.257 (provisions concerning non-textile articles), the following sections have been amended:

1. In § 10.252, the definition of the term "United States vessel" has been amended; and
2. §§ 10.254 and 10.256(b)(2) have been changed to provide that the Certificate of Origin must be signed by the exporter or producer or by the exporter's or producer's authorized agent having knowledge of the relevant facts;

Except as discussed above, interim §§ 10.251 through 10.257 as published in T.D. 03–16 are adopted as final.

In addition, the following interim provisions published in T.D. 03–16 are adopted as final without change:

1. Interim §§ 10.201 and 10.202; and
2. The interim amendments to the Appendix to part 163.

SIGNING AUTHORITY

The amendments set forth in this document are being issued in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations relating to certain CBP revenue functions.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

REGULATORY FLEXIBILITY ACT

The regulations to implement the trade benefit provisions for Andean countries were previously published as interim regulations and provide trade benefits to the importing public. Pursuant to the provisions of 5 U.S.C. 553(b)(B), CBP issued the regulations as interim rules because it had determined that prior public notice and comment procedures on these regulations were unnecessary and contrary to the public interest. Because no notice of proposed rulemaking was 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.

PAPERWORK REDUCTION ACT

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act

(44 U.S.C. 3507) under control number 1651–0091. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collection of information in these final regulations is in §§ 10.244, 10.245, 10.246, 10.248, 10.254, 10.255, and 10.256. This information conforms to requirements in 19 U.S.C. 3203 and is used by CBP to determine whether textile and apparel articles and other products imported from designated beneficiary countries are entitled to preferential treatment under the Andean Trade Promotion and Drug Eradication Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 4 hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to Customs and Border Protection, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229, and the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Part 178 of the regulations (19 CFR 178), containing the list of approved information collections, is revised to reflect this additional information collection.

LIST OF SUBJECTS

19 CFR Part 10

Andean Trade Preference, Assembly, Bonds, Customs duties and inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

Accordingly, the interim rule amending Parts 10 and 163, Customs and Border Protection Regulations (19 CFR Parts 10 and 163), which was published at 68 FR 14478–14500 on March 25, 2003, and corrected at 68 FR 67338 on December 1, 2003, is adopted as a final rule with the following changes.

PART 10 – ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 and the specific authority citation for §§ 10.241 through 10.248 and §§ 10.251 through 258 continue to read, as follows:

AUTHORITY: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.241 through 10.248 and §§ 10.251 through 10.257 also issued under 19 U.S.C. 3203.

2. Sections 10.241 through 10.248 are revised to read as follows:

§ 10.241 Applicability.

Title XXXI of Public Law 107–210 (116 Stat. 933), entitled the Andean Trade Promotion and Drug Eradication Act (ATPDEA), amended sections 202, 203, 204, and 208 of the Andean Trade Preference Act (the ATPA, 19 U.S.C. 3201–3206) to authorize the President to extend additional trade benefits to countries that are designated as beneficiary countries under the ATPA. Section 204(b)(3) of the ATPA (19 U.S.C. 3203(b)(3)) provides for the preferential treatment of certain apparel and other textile articles from those ATPA beneficiary countries which the President designates as ATPDEA beneficiary countries. The provisions of §§ 10.241 through 10.248 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to ATPA section 204(b)(3) and Subchapter XXI, Chapter 98, HTSUS.

§ 10.242 Definitions.

When used in §§ 10.241 through 10.248, the following terms have the meanings indicated:

Apparel articles. "Apparel articles" means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99.15 and 6505.90 of the HTSUS.

Assembled or sewn or otherwise assembled in one or more ATPDEA beneficiary countries. "Assembled" and "sewn or otherwise assembled" when used in the context of production of an apparel or other textile article in one or more ATPDEA beneficiary countries has reference to a joining together of two or more components that occurred in one or more ATPDEA beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

ATPA. "ATPA" means the Andean Trade Preference Act, 19 U.S.C. 3201–3206.

ATPDEA beneficiary country. "ATPDEA beneficiary country" means a "beneficiary country" as defined in § 10.202(a) for purposes of the ATPA which the President also has designated as a beneficiary

country for purposes of preferential treatment of apparel and other textile articles under 19 U.S.C. 3203(b)(3) and which has been the subject of a determination by the President or his designee, published in the **Federal Register**, that the beneficiary country has satisfied the requirements of 19 U.S.C. 3203(b)(5)(A)(ii).

Chief value. "Chief value" when used with reference to llama, alpaca, and vicuña means that the value of those materials exceeds the value of any other single textile material in the fabric or component under consideration, with the value in each case determined by application of the principles set forth in § 10.243(c)(1)(ii).

Cut in one or more ATPDEA beneficiary countries. "Cut" when used in the context of production of textile luggage in one or more ATPDEA beneficiary countries means that all fabric components used in the assembly of the article were cut from fabric in one or more ATPDEA beneficiary countries, or were cut from fabric in the United States and used in a partial assembly operation in the United States prior to cutting of fabric and assembly of the article in one or more ATPDEA beneficiary countries, or both.

Foreign origin. "Foreign origin" means, in the case of a finding or trimming of non-textile materials, that the finding or trimming is a product of a country other than the United States or a ATPDEA beneficiary country and, in the case of a finding, trimming, or interlining of textile materials, that the finding, trimming, or interlining does not meet all of the U.S. and ATPDEA beneficiary country production requirements for yarns, fabrics, and/or components specified under § 10.243(a) for the article in which it is incorporated.

HTSUS. "HTSUS" means the Harmonized Tariff Schedule of the United States.

Knit-to-Shape Components. "Knit-to-shape," when used with reference to textile components, means components that are knitted or crocheted from a yarn directly to a specific shape, that is, the shape or form of the component as it is used in the apparel article, containing at least one self-start edge. Minor cutting or trimming will not affect the determination of whether a component is "knit-to-shape."

Luggage. "Luggage" means travel goods (such as trunks, hand trunks, lockers, valises, satchels, suitcases, wardrobe cases, overnight bags, pullman bags, gladstone bags, traveling bags, knapsacks, kitbags, haversacks, duffle bags, and like articles designed to contain clothing or other personal effects during travel) and brief cases, portfolios, school bags, photographic equipment bags, golf bags, camera cases, binocular cases, gun cases, occupational luggage cases (for example, physicians' cases, sample cases), and like containers and cases designed to be carried with the person. The term "luggage" does not include handbags (that is, pocketbooks, purses, shoulder bags, clutch bags, and all similar articles, by whatever name known, customarily carried by women or girls). The term "luggage" also does not include flat goods (that is, small flatware designed to be carried

on the person, such as banknote cases, bill cases, billfolds, bill purses, bill rolls, card cases, change cases, cigarette cases, coin purses, coin holders, compacts, currency cases, key cases, letter cases, license cases, money cases, pass cases, passport cases, powder cases, spectacle cases, stamp cases, vanity cases, tobacco pouches, and similar articles).

NAFTA. "NAFTA" means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential treatment. "Preferential treatment" means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels as provided in 19 U.S.C. 3203(b)(3).

Self-start edge. "Self-start edge" when used with reference to knit-to-shape components means a finished edge which is finished as the component comes off the knitting machine. Several components with finished edges may be linked by yarn or thread as they are produced from the knitting machine.

Wholly formed fabric components. "Wholly formed," when used with reference to fabric components, means that all of the production processes, starting with the production of wholly formed fabric and ending with a component that is ready for incorporation into an apparel article, took place in a single country.

Wholly formed fabrics. "Wholly formed," when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

Wholly formed yarns. "Wholly formed," when used with reference to yarns, means that all of the production processes, starting with the extrusion of filament, strip, film, or sheet and including drawing to fully orient a filament or slitting a film or sheet into strip, or the spinning of all fibers into yarn, or both, and ending with a yarn or plied yarn, took place in the United States or in one or more ATPDEA beneficiary countries.

§ 10.243 Articles eligible for preferential treatment.

(a) General. Subject to paragraphs (b) and (c) of this section, preferential treatment applies to the following apparel and other textile articles that are imported directly into the customs territory of the United States from an ATPDEA beneficiary country:

(1) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from any one of the following:

(i) Fabrics or fabric components wholly formed, or components knit-to-shape, in the United States, from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in the United States), provided that, if the apparel article is assembled from knitted or crocheted or woven wholly formed fabrics or from knitted or crocheted or woven wholly formed fabric components produced from fabric, all dyeing, printing, and finishing of that knitted or crocheted or woven fabric or component was carried out in the United States;

(ii) Fabrics or fabric components formed, or components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in one or more ATPDEA beneficiary countries, if those fabrics (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries) or components are in chief value of llama, alpaca, and/or vicuña;

(iii) Fabrics or yarns, provided that apparel articles (except articles classifiable under subheading 6212.10 of the HTSUS) of those fabrics or yarns would be considered an originating good under General Note 12(t), HTSUS, if the apparel articles had been imported directly from Canada or Mexico; or

(iv) Fabrics or yarns that the President or his designee has designated in the **Federal Register** as fabrics or yarns that cannot be supplied by the domestic industry in commercial quantities in a timely manner;

(2) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries, or in the United States, or in both, exclusively from a combination of fabrics, fabric components, knit-to-shape components or yarns described in two or more of paragraphs (a)(1)(i) through (a)(1)(iv) of this section;

(3) A handloomed, handmade, or folklore apparel or other textile article of an ATPDEA beneficiary country that the President or his designee and representatives of the ATPDEA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a handloomed, handmade, or folklore article by the competent authority of the ATPDEA beneficiary country;

(4) Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or in one or more ATPDEA beneficiary countries, or in both, other than articles entered as articles described in paragraphs (a)(1) through (a)(3) and (a)(7) of this section, and provided that any applicable additional requirements set forth in § 10.248 are met;

(5) Textile luggage assembled in an ATPDEA beneficiary country from fabric wholly formed and cut in the United States, from

yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(6) Textile luggage assembled in one or more ATPDEA beneficiary countries from fabric cut in one or more ATPDEA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States; and

(7) Apparel articles sewn or otherwise assembled in one or more ATPDEA beneficiary countries from fabrics or from fabric components formed, or from components knit-to-shape, in one or more ATPDEA beneficiary countries from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more ATPDEA beneficiary countries), including apparel articles sewn or otherwise assembled in part but not exclusively from any of the fabrics, fabric components formed, or components knit-to-shape described in paragraph (a)(1) of this section.

(b) Dyeing, printing, finishing and other operations–(1) Dyeing, printing and finishing operations. Dyeing, printing, and finishing operations may be performed on any yarn, fabric, or knit-to-shape or other component used in the production of any article described under paragraph (a) of this section without affecting the eligibility of the article for preferential treatment, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country and subject to the following additional conditions:

(i) In the case of an article described in paragraph (a)(1), (a)(2), or (a)(7) of this section that contains a knitted or crocheted or woven fabric, or a knitted or crocheted or woven fabric component produced from fabric, that was wholly formed in the United States from yarns wholly formed in the United States or in one or more ATPDEA beneficiary countries, as described in paragraph (a)(1)(i) of this section, any dyeing, printing, or finishing of that knitted or crocheted or woven fabric or component must have been carried out in the United States; and

(ii) In the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country only if that operation is incidental to the assembly process within the meaning of § 10.16.

(2) Other operations. An article described under paragraph (a) of this section that is otherwise eligible for preferential treatment will not be disqualified from receiving that treatment by virtue of having undergone one or more operations such as embroidering, stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing or screen printing, provided that the operation is performed in the United States or in an ATPDEA beneficiary country and not in any other country. However,

in the case of assembled luggage described in paragraph (a)(5) of this section, an operation may be performed in an ATPDEA beneficiary country without affecting the eligibility of the article for preferential treatment only if it is incidental to the assembly process within the meaning of § 10.16.

(c) Special rules for certain component materials–(1) Foreign findings, trimmings, interlinings, and yarns–(i) General. An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains:

(A) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "findings and trimmings" include, but are not limited to, sewing thread, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, elastic strips, zippers (including zipper tapes), and labels;

(B) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "interlinings" include only a chest type plate, a "hymo" piece, or "sleeve header," of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(C) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(D) Yarns not wholly formed in the United States or in one or more ATPDEA beneficiary countries if the total weight of all those yarns is not more than 7 percent of the total weight of the article.

(ii) "Cost" and "value" defined. The "cost" of components and the "value" of findings and trimmings or interlinings referred to in paragraph (c)(1)(i) of this section means:

(A) The ex-factory price of the components, findings and trimmings, or interlinings as set out in the invoice or other commercial documents, or, if the price is other than ex-factory, the price as set out in the invoice or other commercial documents adjusted to arrive at an ex-factory price; or

(B) If the price cannot be determined under paragraph (c)(1)(ii)(A) of this section or if CBP finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the components, findings and trimmings, or interlinings, including the cost or value of materials and general expenses, plus a reasonable amount for profit.

(iii) Treatment of yarns as findings or trimmings. If any yarns not wholly formed in the United States or one or more ATPDEA beneficiary countries are used in an article as a finding or

trimming described in paragraph (c)(1)(i)(A) of this section, the yarns will be considered to be a finding or trimming for purposes of paragraph (c)(1)(i) of this section.

(2) Special rule for nylon filament yarn. An article otherwise described under paragraph (a)(1)(i) through (iii), (a)(2), or (a)(7) of this section will not be ineligible for the preferential treatment referred to in § 10.241 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable in subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS and that is entered free of duty from Canada, Mexico, or Israel.

(d) Imported directly defined. For purposes of paragraph (a) of this section, the words "imported directly" mean:

(1) Direct shipment from any ATPDEA beneficiary country to the United States without passing through the territory of any country that is not an ATPDEA beneficiary country;

(2) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not an ATPDEA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any ATPDEA beneficiary country to the United States through the territory of any country that is not an ATPDEA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.244 Certificate of Origin.

(a) General. A Certificate of Origin must be employed to certify that an apparel or other textile article being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.241. The Certificate of Origin must be prepared in the ATPDEA beneficiary country by the

producer or exporter or by the producer's or exporter's authorized agent in the format specified in paragraph (b) of this section. If the person preparing the Certificate of Origin is not the producer of the article, the person may complete and sign a Certificate of Origin on the basis of:

(1) The person's reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the person by the producer.

(b) Form of Certificate. The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

14. Date: (DD/MM/YY)	15. Blanket Period From: To:	16: Telephone: Facsimile:

2. Producer Name & Address:	
4. Description of Article:	
5. Preference Group:	

Group	*Each description below is only a summary of the cited CFR provision.*	19 CFR
A.	Apparel assembled from U.S. formed, dyed, printed and finished fabrics or fabric components, or U.S. formed knit-to-shape components from U.S. or Andean yarns.	10.243(a)(1)(i)
B.	Apparel assembled from Andean chief value llama, alpaca or vicuña fabrics, fabric components, or knit-to-shape components, from Andean yarns.	10.243(a)(1)(ii)
C.	Apparel assembled from fabrics or yarns considered as being in short supply in the NAFTA.	10.243(a)(1)(iii)
D.	Apparel assembled from fabrics or yarns designated as not available in commercial quantities in the United States.	10.243(a)(1)(iv)
E.	Apparel assembled from a combination of two or more yarns, fabrics, fabric components, or knit-to-shape components described in preference groups A though D.	10.243(a)(2)
F.	Handloomed, handmade, or folklore textile and apparel goods.	10.243(a)(3)
G.	Brassieres assembled in the U.S. and/or one or more Andean beneficiary countries.	10.243(a)(4)
H.	Textile luggage assembled from U.S. formed fabrics from U.S. yarns.	10.243(a)(5)&(6)
I.	Apparel assembled from Andean formed fabrics, fabric components, or knit-to-shape components from U.S. or Andean yarns, whether or not also assembled, in part, from yarns, fabrics and fabric components described in preference groups A through D.	10.243(a)(7)

6. U.S./Andean Fabric Producer Name & Address:	7. U.S./Andean Yarn Producer Name & Address:
8. Handloomed, Handmade, or Folklore Article:	9. Name of Short Supply Fabric or Yarn:

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document. I agree to maintain, and present upon request, documentation necessary to support this certificate.

10. Authorized Signature:	11. Company:
12. Name: (Print or Type)	13. Title:

(c) Preparation of Certificate. The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state "available to Customs and Border Protection (CBP) upon request" in block 2. If the producer and the exporter are the same, state "same" in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 9 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the name of the folklore article or should state that the article is handloomed or handmade of handloomed fabric;

(11) Block 9 should be completed if the article described in block 4 incorporates a fabric or yarn described in preference group C or D and should state the name of the fabric or yarn that has been considered as being in short supply in the NAFTA or that has been designated as not available in commercial quantities in the United States. Block 9 also should be completed if preference group E or I applies to the article described in block 4 and the article incorporates a fabric or yarn described in preference group C or D;

(12) Block 10 must contain the signature of the producer or exporter or the producer's or exporter's authorized agent having knowledge of the relevant facts;

(13) Block 14 should reflect the date on which the Certificate was completed and signed;

(14) Block 15 should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see § 10.246(b)(4)(ii)). The "from" date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 14). The "to" date is the date on which the blanket period expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§ 10.245 Filing of claim for preferential treatment.

(a) Declaration. In connection with a claim for preferential treatment for an apparel or other textile article described in § 10.243, the importer must make a written declaration that the article qualifies for that treatment. The inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.246(d)(1), the declaration required under this paragraph must be based on a Certificate of Origin that has been completed and properly executed in accordance with § 10.244, that covers the article being imported, and that is in the possession of the importer.

(b) Corrected declaration. If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the CBP port where the declaration was originally filed.

§ 10.246 Maintenance of records and submission of Certificate by importer.

(a) Maintenance of records. Each importer claiming preferential treatment for an article under § 10.245 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include a copy of the Certificate of Origin referred to in § 10.245(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) Submission of Certificate. An importer who claims preferential treatment on an apparel or other textile article under § 10.245(a)

must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to CBP under this paragraph:

(1) Must be in writing or must be transmitted electronically through any electronic data interchange system authorized by CBP for that purpose;

(2) If in writing, must be signed by the producer or exporter or the producer's or exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to CBP upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.244(c)(14), "identical articles" means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) Correction and nonacceptance of Certificate. If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) Certificate not required–(1) General. Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the ATPDEA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

_____
Name

_____
Title

_____
Address

_____
Signature and Date

(2) Exception. If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.244 through 10.246, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a "series of importations" means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.247 Verification and justification of claim for preferential treatment.

(a) Verification by CBP. A claim for preferential treatment made under § 10.245, including any statements or other information contained on a Certificate of Origin submitted to CBP under § 10.246, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to CBP by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place

of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) Importer requirements. In order to make a claim for preferential treatment under § 10.245, the importer:

(1) Must have records that explain how the importer came to the conclusion that the apparel or other textile article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.243(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States or in an ATPDEA beneficiary country, the importer must have records that identify the producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.244(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.243(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from CBP, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

§ 10.248 Additional requirements for preferential treatment of brassieres.

(a) Definitions. When used in this section, the following terms have the meanings indicated:

(1) Producer. "Producer" means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in an ATPDEA beneficiary country.

(2) Entity controlling production. "Entity controlling production" means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the

production process in an ATPDEA beneficiary country through a contractual relationship or other indirect means.

(3) Fabrics formed in the United States. "Fabrics formed in the United States" means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) Cost. "Cost" when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if CBP finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) Declared customs value. "Declared customs value" when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price,

but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if CBP finds that cost to be unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and dyeing, printing, and finishing expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric to the port of exportation;

(C) In the case of fabric components purchased by the producer or entity controlling production, the f.o.b. port of exportation price of those fabric components as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, or, if the price is other than f.o.b. port of exportation:

(*1*) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify; or

(*2*) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the cost or value of any non-textile materials, and less expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, and less the freight, insurance, packing, and other costs incurred in transporting the fabric components to the place of production if included in that price; and

(D) In the case of fabric components for which a fabric cost cannot be determined under paragraph (a)(5)(ii)(C) of this section or if CBP finds that cost to be unreasonable: all reasonable expenses incurred in the growth, production, or manufacture of the fabric components, including the cost or value of materials (which does not include the cost of recoverable scrap generated in the growth, production, or manufacture of the fabric components) and general expenses, but excluding the cost or value of any non-textile materials, and excluding expenses for cutting or other processing to create the fabric components other than knitting to shape, that the producer or entity controlling production can verify, plus a reasonable

amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabric components to the port of exportation.

(6) Year. "Year" means a 12-month period beginning on October 1 and ending on September 30 but does not include any 12-month period that began prior to October 1, 2002.

(7) Entered. "Entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(b) Limitations on preferential treatment–(1) General. During the year that begins on October 1, 2003, and during any subsequent year, articles of a producer or an entity controlling production that conform to the production standards set forth in § 10.243(a)(4) will be eligible for preferential treatment only if:

(i) The aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during the immediately preceding year was at least 75 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that are entered as articles described in § 10.243(a)(4) during that year; or

(ii) In a case in which the 75 percent requirement set forth in paragraph (b)(1)(i) of this section was not met during a year and therefore those articles of that producer or that entity controlling production were not eligible for preferential treatment during the following year, the aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during the immediately preceding year was at least 85 percent of the aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in all of those articles of that producer or that entity controlling production that conform to the production standards set forth in § 10.243(a)(4) and that were entered during that year; and

(iii) In conjunction with the filing of the claim for preferential treatment under § 10.245, the importer records on the entry summary or warehouse withdrawal for consumption (CBP Form 7501, column 34), or its electronic equivalent, the distinct and unique identifier assigned by CBP to the applicable documentation prescribed under paragraph (c) of this section.

(2) Rules of application–(i) General. For purposes of paragraphs (b)(1)(i) and (b)(1)(ii) of this section and for purposes of preparing and filing the documentation prescribed in paragraph (c) of this section, the following rules will apply:

(A) The articles in question must have been produced in the manner specified in § 10.243(a)(4) and the articles in question must be entered within the same year;

(B) Articles that are exported to countries other than the United States and are never entered are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(C) Articles that are entered under an HTSUS subheading other than the HTSUS subheading which pertains to articles described in § 10.243(a)(4) are not to be considered in determining compliance with the 75 percent standard specified in paragraph (b)(1)(i) of this section;

(D) For purposes of determining compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section, all articles that conform to the production standards set forth in § 10.243(a)(4) must be considered, regardless of the HTSUS subheading under which they were entered;

(E) Fabric components and fabrics that constitute findings or trimmings are not to be considered in determining compliance with the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section;

(F) Beginning October 1, 2003, in order for articles to be eligible for preferential treatment in a given year, a producer of, or entity controlling production of, those articles must have met the 75 percent standard specified in paragraph (b)(1)(i) of this section during the immediately preceding year. If articles of a producer or entity controlling production fail to meet the 75 percent standard specified in paragraph (b)(1)(i) of this section during a year, articles of that producer or entity controlling production:

(*1*) Will not be eligible for preferential treatment during the following year;

(*2*) Will remain ineligible for preferential treatment until the year that follows a year in which articles of that producer or entity controlling production met the 85 percent standard specified in paragraph (b)(1)(ii) of this section; and

(*3*) After the 85 percent standard specified in paragraph (b)(1)(ii) of this section has been met, will again be subject to the 75 percent standard specified in paragraph (b)(1)(i) of this section during the following year for purposes of determining eligibility for preferential treatment in the next year.

(G) A new producer or new entity controlling production, that is, a producer or entity controlling production who did not produce or control production of articles that were entered as articles described in § 10.243(a)(4) during the immediately preceding year, must first establish compliance with the 85 percent standard specified in paragraph (b)(1)(ii) of this section as a prerequisite to prepa-

ration of the declaration of compliance referred to in paragraph (c) of this section;

(H) A declaration of compliance prepared by a producer or by an entity controlling production must cover all production of that producer or all production that the entity controls for the year in question;

(I) A producer would not prepare a declaration of compliance if all of its production is covered by a declaration of compliance prepared by an entity controlling production;

(J) In the case of a producer, the 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section and the declaration of compliance procedure under paragraph (c) of this section apply to all articles of that producer for the year in question, even if some but not all of that production is also covered by a declaration of compliance prepared by an entity controlling production;

(K) The U.S. importer does not have to be the producer or the entity controlling production who prepared the declaration of compliance; and

(L) The exclusion references regarding findings and trimmings in paragraph (b)(1)(i) and paragraph (b)(1)(ii) of this section apply to all findings and trimmings, whether or not they are of foreign origin.

(ii) Examples. The following examples will illustrate application of the principles set forth in paragraph (b)(2)(i) of this section.

Example 1. An ATPDEA beneficiary country producer of articles that meet the production standards specified in § 10.243(a)(4) in the first year sends 50 percent of that production to ATPDEA region markets and the other 50 percent to the U.S. market; the cost of the fabrics formed in the United States equals 100 percent of the value of all of the fabric in the articles sent to the ATPDEA region and 60 percent of the value of all of the fabric in the articles sent to the United States. Although the cost of fabrics formed in the United States is more than 75 percent of the value of all of the fabric used in all of the articles produced, this producer could not prepare a valid declaration of compliance because the articles sent to the United States did not meet the minimum 75 percent standard.

Example 2. A producer sends to the United States in the first year three shipments of articles that meet the description in § 10.243(a)(4); one of those shipments is entered under the HTSUS subheading that covers articles described in § 10.243(a)(4), the second shipment is entered under the HTSUS subheading that covers articles described in § 10.243(a)(7), and the third shipment is entered under subheading 9802.00.80, HTSUS. In determining whether the minimum 75 percent standard has been met in the first year for purposes of entry of articles under the HTSUS subheading that covers articles described in § 10.243(a)(4) during the following

(that is, second) year, consideration must be restricted to the articles in the first shipment and therefore must not include the articles in the second and third shipments.

Example 3. A producer in the second year begins production of articles that conform to the production standards specified in § 10.243(a)(4); some of those articles are entered in that year under HTSUS subheading 6212.10 and others under HTSUS subheading 9802.00.80 but none are entered in that year under the HTSUS subheading which pertains to articles described in § 10.243(a)(4) because the 75 percent standard had not been met in the preceding (that is, first) year. In this case the 85 percent standard applies, and all of the articles that were entered under the various HTSUS provisions in the second year must be taken into account in determining whether that 85 percent standard has been met. If the 85 percent was met in the aggregate for all of the articles entered in the second year, in the next (that is, third) year articles of that producer may receive preferential treatment under the HTSUS subheading which pertains to articles described in § 10.243(a)(4).

Example 4. An entity controlling production of articles that meet the description in § 10.243(a)(4) buys for the U.S., Canadian and Mexican markets; the articles in each case are first sent to the United States where they are entered for consumption and then placed in a commercial warehouse from which they are shipped to various stores in the United States, Canada and Mexico. Notwithstanding the fact that some of the articles ultimately ended up in Canada or Mexico, a declaration of compliance prepared by the entity controlling production must cover all of the articles rather than only those that remained in the United States because all of those articles had been entered for consumption.

Example 5. Fabric is cut and sewn in the United States with other U.S. materials to form cups which are joined together to form brassiere front subassemblies in the United States, and those front subassemblies are then placed in a warehouse in the United States where they are held until the following year; during that following year all of the front subassemblies are shipped to an ATPDEA beneficiary country where they are assembled with elastic strips for use as brassiere straps and labels produced in an Asian country and other fabrics, components or materials produced in the ATPDEA beneficiary country to form articles that meet the production standards specified in § 10.243(a)(4) and that are then shipped to the United States and entered during that same year. In determining whether the entered articles meet the minimum 75 or 85 percent standard, the fabric in the labels is to be disregarded entirely because the labels constitute findings or trimmings for purposes of this section, and all of the fabric in the front subassemblies is countable because it was all formed in the United States and used in the production of articles that were entered in the same year.

Example 6. An ATPDEA beneficiary country producer's entire production of articles that meet the description in § 10.243(a)(4) is sent to a U.S. importer in two separate shipments, one in February and the other in June of the same calendar year; the articles shipped in February do not meet the minimum 75 percent standard, the articles shipped in June exceed the 85 percent standard, and the articles in the two shipments, taken together, do meet the 75 percent standard; the articles covered by the February shipment are entered for consumption on March 1 of that calendar year, and the articles covered by the June shipment are placed in a CBP bonded warehouse upon arrival and are subsequently withdrawn from warehouse for consumption on November 1 of that calendar year. The ATPDEA beneficiary country producer may not prepare a valid declaration of compliance covering the articles in the first shipment because those articles did not meet the minimum 75 percent standard and because those articles cannot be included with the articles of the second shipment on the same declaration of compliance since they were entered in a different year. However, the ATPDEA beneficiary country producer may prepare a valid declaration of compliance covering the articles in the second shipment because those articles did meet the requisite 85 percent standard which would apply for purposes of entry of articles in the following year.

Example 7. A producer in the second year begins production of articles exclusively for the U.S. market that meet the production standards specified in § 10.243(a)(4), but the entered articles do not meet the requisite 85 percent standard until the third year. The producer's articles may not receive preferential treatment during the second year because there was no production (and thus there were no entered articles) in the immediately preceding (that is, first) year on which to assess compliance with the 75 percent standard. The producer's articles also may not receive preferential treatment during the third year because the 85 percent standard was not met in the immediately preceding (that is, second) year. However, the producer's articles are eligible for preferential treatment during the fourth year based on compliance with the 85 percent standard in the immediately preceding (that is, third) year.

Example 8. An entity controlling production (Entity A) uses five ATPDEA beneficiary country producers (Producers 1–5), all of which produce only articles that meet the description in § 10.243(a)(4); Producers 1–4 send all of their production to the United States and Producer 5 sends 10 percent of its production to the United States and the rest to Europe; Producers 1–3 and Producer 5 produce only pursuant to contracts with Entity A, but Producer 4 also operates independently of Entity A by producing for several U.S. importers, one of which is an entity controlling production (Entity B) that also controls all of the production of articles of one other producer (Producer 6) which sends all of its production to the United States. A declara-

tion of compliance prepared by Entity A must cover all of the articles of Producers 1–3 and the 10 percent of articles of Producer 5 that are sent to the United States and that portion of the articles of Producer 4 that are produced pursuant to the contract with Entity A, because Entity A controls the production of those articles. There is no need for Producers 1–3 and Producer 5 to prepare a declaration of compliance because they have no production that is not covered by a declaration of compliance prepared by an entity controlling production. A declaration of compliance prepared by Producer 4 would cover all of its production, that is, articles produced for Entity A, articles produced for Entity B, and articles produced independently for other U.S. importers; a declaration of compliance prepared by Entity B must cover that portion of the production of Producer 4 that it controls as well as all of the production of Producer 6 because Entity B also controls all of the production of Producer 6. Producer 6 would not prepare a declaration of compliance because all of its production is covered by the declaration of compliance prepared by Entity B.

(c) Documentation–(1) Initial declaration of compliance. In order for an importer to comply with the requirement set forth in paragraph (b)(1)(iii) of this section, the producer or the entity controlling production must have filed with CBP, in accordance with paragraph (c)(4) of this section, a declaration of compliance with the applicable 75 or 85 percent requirement prescribed in paragraph (b)(1)(i) or (b)(1)(ii) of this section. After filing of the declaration of compliance has been completed, CBP will advise the producer or the entity controlling production of the distinct and unique identifier assigned to that declaration. The producer or the entity controlling production will then be responsible for advising each appropriate U.S. importer of that distinct and unique identifier for purposes of recording that identifier on the entry summary or warehouse withdrawal. In order to provide sufficient time for advising the U.S. importer of that distinct and unique identifier prior to the arrival of the articles in the United States, the producer or the entity controlling production should file the declaration of compliance with CBP at least 10 calendar days prior to the date of the first shipment of the articles to the United States.

(2) Amended declaration of compliance. If the information on the declaration of compliance referred to in paragraph (c)(1) of this section is based on an estimate because final year-end information was not available at that time and the final data differs from the estimate, or if the producer or the entity controlling production has reason to believe for any other reason that the declaration of compliance that was filed contained erroneous information, within 30 calendar days after the final year-end information becomes available or within 30 calendar days after the date of discovery of the error:

(i) The producer or the entity controlling production must file with the CBP office identified in paragraph (c)(4) of this section an

amended declaration of compliance containing that final year-end information or other corrected information; or

(ii) If that final year-end information or other corrected information demonstrates noncompliance with the applicable 75 or 85 percent requirement, the producer or the entity controlling production must in writing advise both the CBP office identified in paragraph (c)(4) of this section and each appropriate U.S. importer of that fact.

(3) Form and preparation of declaration of compliance–(i) Form. The declaration of compliance referred to in paragraph (c)(1) of this section may be printed and reproduced locally and must be in the following format:

Date:	

Declaration of Compliance for Brassieres (19 CFR 10.243(a)(4) and 10.248)	
1. Year beginning date: October 1, ____. Year ending date: September 30, ____.	Official U.S. CBP Use Only Assigned number: _____ Assignment date: _____
2. Identity of preparer (producer or entity controlling production): Full name and address:	Telephone number: _____ Facsimile number: _____ Importer identification number: _____
3. If the preparer is an entity controlling production, provide the following for each producer: Full name and address:	Telephone number: _____ Facsimile number: _____
4. Aggregate cost of fabrics (exclusive of all findings and trimmings) formed in the United States that were used in the production of brassieres that were entered during the year: _____	
5. Aggregate declared customs value of the fabric (exclusive of all findings and trimmings) contained in brassieres that were entered during the year: _____	
6. I declare that the aggregate cost of fabric (exclusive of all findings and trimmings) formed in the United States was at least 75 percent (or 85 percent, if applicable under 19 CFR 10.248(b)(1)(ii)) of the aggregate declared customs value of the fabric contained in brassieres entered during the year.	
7. Authorized signature:	8. Name and title (print or type):

(ii) Preparation. The following rules will apply for purposes of completing the declaration of compliance set forth in paragraph (c)(3)(i) of this section:

(A) In block 1, fill in the year commencing October 1 and ending September 30 of the calendar year during which the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was met;

(B) Block 2 should state the legal name and address (including country) of the preparer and should also include the preparer's importer identification number (see § 24.5 of this chapter), if the preparer has one;

(C) Block 3 should state the legal name and address (including country) of the ATPDEA beneficiary country producer if that producer is not already identified in block 2. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers;

(D) Blocks 4 and 5 apply only to articles that were entered during the year identified in block 1; and

(E) In block 7, the signature must be that of an authorized officer, employee, agent or other person having knowledge of the relevant facts and the date must be the date on which the declaration of compliance was completed and signed.

(4) Filing of declaration of compliance. The declaration of compliance referred to in paragraph (c)(1) of this section:

(i) Must be completed either in the English language or in the language of the country in which the articles covered by the declaration were produced. If the declaration is completed in a language other than English, the producer or the entity controlling production must provide to CBP upon request a written English translation of the declaration; and

(ii) Must be filed with the New York Strategic Trade Center, Customs and Border Protection, 1 Penn Plaza, New York, New York 10119.

(d) Verification of declaration of compliance–(1) Verification procedure. A declaration of compliance filed under this section will be subject to whatever verification CBP deems necessary. In the event that CBP for any reason is prevented from verifying the statements made on a declaration of compliance, CBP may deny any claim for preferential treatment made under § 10.245 that is based on that declaration. A verification of a declaration of compliance may involve, but need not be limited to, a review of:

(i) All records required to be made, kept, and made available to CBP by the importer, the producer, the entity controlling production, or any other person under part 163 of this chapter;

(ii) Documentation and other information regarding all articles that meet the production standards specified in § 10.243(a)(4) that were exported to the United States and that were entered during the year in question, whether or not a claim for preferential treatment was made under § 10.245. Those records and other information include, but are not limited to, work orders and other production records, purchase orders, invoices, bills of lading and other shipping documents;

(iii) Evidence to document the cost of fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records;

(iv) Evidence to document the cost or value of all fabric other than fabrics formed in the United States that were used in the production of the articles in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents, work orders and other production records, and inventory control records; and

(v) Accounting books and documents to verify the records and information referred to in paragraphs (d)(1)(ii) through (d)(1)(iv) of this section. The verification of purchase orders, invoices and bills of lading will be accomplished through the review of a distinct audit trail. The audit trail documents must consist of a cash disbursement or purchase journal or equivalent records to establish the purchase of the fabric. The headings in each of these journals or other records must contain the date, vendor name, and amount paid for the fabric. The verification of production records and work orders will be accomplished through analysis of the inventory records of the producer or entity controlling production. The inventory records must reflect the production of the finished article which must be referenced to the original purchase order or lot number covering the fabric used in production. In the inventory production records, the inventory should show the opening balance of the inventory plus the purchases made during the accounting period and the inventory closing balance.

(2) Notice of determination. If, based on a verification of a declaration of compliance filed under this section, CBP determines that the applicable 75 or 85 percent standard specified in paragraph (b)(1)(i) or paragraph (b)(1)(ii) of this section was not met, CBP will publish a notice of that determination in the **Federal Register**.

3. Section 10.252 is amended by revising the definition of the term "United States vessel" to read as follows:

§ 10.252 Definitions.

* * *

United States vessel. "United States vessel" means either: a vessel having a certificate of documentation with a fishery endorsement under chapter 121 of title 46 of the United States Code; or a vessel that is documented under the laws of the United States and for which a license has been issued pursuant to section 9 of the South Pacific Tuna Act of 1988.

4. Section 10.254 is revised to read as follows:

§ 10.254 Certificate of Origin.

A Certificate of Origin as specified in § 10.256 must be employed to certify that an article described in § 10.253(a) being exported from an ATPDEA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.251. The Certificate of Origin must be prepared in the ATPDEA beneficiary country by the producer or exporter or by the producer's or exporter's authorized agent. If the person preparing the Certificate of Origin is not the producer of the article, the person may complete and sign a Certificate on the basis of:

(a) The person's reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(b) A completed and signed Certificate of Origin for the article voluntarily provided to the person by the producer.

* * * * *

5. Paragraph (b)(2) of § 10.256 is amended to read as follows:

10.256 Maintenance of records and submission of Certificate by importer.

* * * * *

(b) * * *

(2) Must be signed by the producer or exporter or by the producer's or exporter's authorized agent having knowledge of the relevant facts;

* * * * *

PART 178 – APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

AUTHORITY: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 et seq.

2. Section 178.2 is amended by adding a new listing in the table in appropriate numerical order to read as follows:

19 CFR Section	Description	OMB control No.
* * * * *		
§§ 10.244, 10.245, 10.246, 10.248, 10.254, 10.255, and 10.256	Claim for duty-free entry entry of eligible articles under the Andean Trade Promotion and Drug Eradication Act	1651–0091
* * * * *		

JAYSON P. AHERN,
Acting Commissioner,
Bureau of Customs and Border Protection.

Approved: August 2, 2006

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

[Published in the Federal Register, August 7, 2006 (FR 44564)]

General Notices

Updated List of the Ports-of-Entry Designated for Departure of Nonimmigrant Aliens Who Are Subject to Special Registration

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

ACTION: Notice.

SUMMARY: This notice provides the public with an updated list of ports through which nonimmigrant aliens who have been specially registered may depart from the United States. Special registration is required of nonimmigrant aliens whose presence in the United States requires closer monitoring.

EFFECTIVE DATE: This Notice is effective August 18, 2006.

FOR FURTHER INFORMATION CONTACT: Sophie Galvan, Program Manager, Traveler Security and Facilitation Division, Of-

fice of Field Operations, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, N.W., Room 5.4.D, Washington D.C. 20229.

SUPPLEMENTARY INFORMATION:

Nonimmigrant Aliens Subject To Special Registration Requirements

On August 12, 2002, the Attorney General published a final rule in the **Federal Register** at 67 FR 52584 to revise the special registration requirements for nonimmigrant aliens whose presence in the United States requires closer monitoring. The final rule requires that when a nonimmigrant alien subject to special registration departs from the United States, that immigrant must report to an Immigration and Naturalization Service (INS) inspecting officer at any port-of-entry (POE), unless INS has, by publication in the **Federal Register**, specified that POE as a port from which nonimmigrant aliens subject to special registration may not depart. This rule became effective on October 1, 2002.

On September 30, 2002, the INS published a notice in the **Federal Register** at 67 FR 61352 listing POEs through which nonimmigrant aliens who have been specially registered may depart from the United States. The notice set forth an affirmative list of POEs that could be used by specially registered nonimmigrant aliens rather than specifying ports that could not be used.

On February 19, 2003, the INS published a notice in the **Federal Register** at 68 FR 8047 expanding the list of POEs through which nonimmigrant aliens who have been specially registered may depart from the United States. On February 26, 2003, that notice was corrected by a publication in the **Federal Register** at 68 FR 8967.

As a result of the creation of the Department of Homeland Security, the Bureau of Customs and Border Protection (CBP) now has jurisdiction over the inspections functions of the former INS.

This notice lists all of the POEs that may be used for departure by special registrants. It expands the previously published list by adding seventeen (17) newly designated POEs; this notice also, however, removes one (1) POE from the previous list.

Removal of Port-of-Entry Designated for Final Registration and Departure by Nonimmigrant Aliens Subject to Special Registration

Effective [insert date ten days from the date of publication in the **Federal Register**], the following POE will no longer be authorized to provide final registration and departure by nonimmigrant aliens subject to special registration: Bell Street Pier 66 (Seattle) Cruise Ship Terminal, Washington.

Additional Ports-Of-Entry Designated For Final Registration And Departure By Nonimmigrant Aliens Subject To Special Registration

Effective [insert date ten days from the date of publication in the **FEDERAL REGISTER**], the POEs listed below will also be designated as POEs that are authorized to provide final registration and departure by nonimmigrant aliens subject to special registration:

Cincinnati/Northern Kentucky International Airport, Ohio;
Cyril E. King Airport, United States Virgin Islands;
Dunseith POE, North Dakota;
Frontier POE, Washington;
Jacksonville Seaport, Florida;
Lukeville, Arizona;
Mayaguez Seaport, Puerto Rico;
Melbourne International Airport, Florida;
Memphis International Airport;
New Orleans International Airport and Seaport;
Ponce Seaport, Puerto Rico;
Rochester International Airport, Minnesota;
Rochester-Ferry Terminal, New York;
Savannah International Airport, Georgia;
Southwest Florida International Airport, Florida;
St. Petersburg/Clearwater International Airport, Florida; and
Sumas POE, Washington.

Ports-Of-Entry Which Are Not Authorized For The Departure Of Nonimmigrant Aliens Subject To Special Registration

Nonimmigrant aliens who are subject to special registration may not depart the United States from any POE, or from any other point-of-embarkation, other than those listed below.

Ports-Of-Entry Designated For Final Registration And Departure By Nonimmigrant Aliens Subject To Special Registration: Updated List

The below list of POEs includes the 17 POEs added by this notice, which will not be authorized to provide final registration and departure until [insert date 10 days from the date of publication in the **Federal Register**]. Bell Street Pier 66 (Seattle) Cruise Ship Terminal, Washington (not listed below) is authorized to provide final registration and departure only until [**insert date**10 days from the date of publication of this notice in the **Federal Register**].

Nonimmigrant aliens subject to special registration may be examined by CBP and may depart from the following POEs:

Amistad Dam POE, Texas;
Alcan POE, Alaska;
Anchorage International Airport, Alaska;

Atlanta Hartsfield International Airport, Georgia;
Baltimore Washington International Airport, Maryland;
Boeing Field, Seattle, Washington;
Bridge of the Americas POE, Texas;
Brownsville/Matamoros POE, Texas;
Buffalo Peace Bridge POE, New York;
Cape Vincent POE, New York;
Calexico POE, California;
Calais POE, Maine;
Cape Canaveral Seaport, Florida;
Chicago Midway Airport, Illinois;
Chicago O'Hare International Airport, Illinois;
Champlain POE, New York;
Charlotte International Airport, North Carolina;
Chateaugay POE, New York;
Cincinnati/Northern Kentucky International Airport, Ohio;
Cleveland International Airport, Ohio;
Columbus POE, New Mexico;
Cyril E. King Airport, United States Virgin Islands;
Dallas/Fort Worth International Airport, Texas;
Del Rio International Bridge POE, Texas;
Denver International Airport, Colorado;
Derby Line POE, Vermont;
Detroit International (Ambassador) Bridge POE, Michigan;
Detroit Canada Tunnel, Michigan;
Detroit Metro Airport, Michigan;
Douglas POE, Arizona;
Dunseith POE, North Dakota;
Eagle Pass POE, Texas;
Eastport POE, Idaho;
Fort Covington POE, New York;
Fort Duncan Bridge POE, Texas;
Frontier POE, Washington;
Galveston POE, Texas;
Grand Portage POE, Minnesota;
Guam International Airport;
Heart Island POE, New York;
Hidalgo POE, Texas;
Highgate Springs POE, Vermont;
Honolulu International Airport, Hawaii;
Honolulu Seaport, Hawaii;
Houlton POE, Maine;
Houston George Bush Intercontinental Airport, Texas;
Houston Seaport, Texas;
International Falls POE, Minnesota;
Jacksonville Seaport, Florida;
John F. Kennedy International Airport, New York;

Ketchikan Seaport, Alaska;
Kona International Airport and Seaport, Hawaii;
Gateway to the Americas Bridge POE, Laredo, Texas;
Las Vegas (McCarran) International Airport, Nevada;
Lewiston Bridge POE, New York;
Logan International Airport, Massachusetts;
Long Beach Seaport, California;
Los Angeles International Airport, California;
Lukeville, Arizona;
Madawaska POE, Maine;
Mayaguez Seaport, Puerto Rico;
Melbourne International Airport, Florida;
Memphis International Airport;
Miami International Airport, Florida;
Miami Marine Unit, Florida;
Minneapolis/St. Paul International Airport, Minnesota;
Mooers POE, New York;
New Orleans International Airport and Seaport;
Niagara Falls, Rainbow Bridge, New York;
Newark International Airport, New Jersey;
Nogales POE, Arizona;
Ogdensburg POE, New York;
Orlando, Florida;
Oroville POE, Washington;
Otay Mesa POE, California;
Pacific Highway POE, Washington;
Pembina POE, North Dakota;
Philadelphia International Airport, Pennsylvania;
Phoenix (Sky Harbor) International Airport, Arizona;
Piegan POE, Montana;
Pittsburgh International Airport, Pennsylvania;
Point Roberts POE, Washington;
Ponce Seaport, Puerto Rico;
Port Everglades Seaport, Florida;
Port Arthur POE, Texas;
Port Huron POE, Michigan;
Portal POE, North Dakota;
Portland International Airport, Oregon;
Progreso Bridge POE, Texas;
Raymond POE, Montana;
Rochester International Airport, Minnesota;
Rochester-Ferry Terminal, New York;
Roosville POE, Montana;
Rouses Point POE, New York;
San Antonio International Airport, Texas;
San Diego (Lindbergh Field) International Airport, California;
San Diego Seaport, California;

San Francisco International Airport, California;
San Juan International Airport and Seaport, Puerto Rico;
Sanford International Airport, Florida;
Sault Ste. Marie POE, Michigan;
Savannah International Airport, Georgia;
Seaway International Bridge/Massena POE, New York;
Seattle Tacoma International Airport, Washington;
Southwest Florida International Airport, Florida;
St. Petersburg/Clearwater International Airport, Florida;
St. Louis International Airport (Lambert Field), Missouri;
St. Thomas Seaport, U.S. Virgin Islands;
Sumas POE, Washington;
Sweetgrass POE, Montana;
Tampa International Airport and Seaport, Florida;
Thousand Islands POE, New York;
Trout River POE, New York
Washington Dulles International Airport, Virginia; and
Ysleta POE, Texas.

Notice Of Where To Report For Final Registration And Departure

The regulations governing the manner in which aliens are registered in the United States are contained in 8 CFR 264.1. Upon registration, whether registered at a POE upon admission to the United States or subsequent to admission, each nonimmigrant alien subject to special registration will be issued an information packet that will list each POE authorized for departure and other instructions on how to comply with 8 CFR 264.1. This packet will also contain specific information regarding hours of operation, directions and contact numbers.

Due to the limited availability of current resources, specifically departure staff and facilities, CBP must limit the POEs authorized for departure registration to effectively capture departure data. As more POEs become available to examine special registrants upon departure, CBP will designate additional POEs by notice in the **Federal Register** and make the list available on the following website: http://www.ice.gov/graphics/specialregistration/WalkawayMaterial.pdf

Dated: August 3, 2006

DEBORAH J. SPERO,
Acting Commissioner,
Customs and Border Protection.

[Published in the Federal Register, August 8, 2006 (FR 45061)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, August 9, 2006,

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.

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN MANICURE AND PEDICURE SETS CONTAINING TEXTILE GLOVES AND SOCKS

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

ACTION: Notice of proposed revocation of a ruling letter pertaining to the tariff classification of certain manicure and pedicure sets containing textile gloves and socks.

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) intends to modify a ruling letter relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of certain manicure and pedicure sets containing textile gloves and socks. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before September 22, 2006.

ADDRESS: Written comments are to be addressed to Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to

inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Tariff Classification and Marking Branch, at (202) 572–8821.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under 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, this notice advises interested parties that CBP intends to revoke a ruling letter relating to the tariff classification of certain manicure and pedicure sets containing textile gloves and socks. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) L81820, dated January 11, 2005, (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to sub-

stantially identical transactions. Any person involved with substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY L81820, dated January 11, 2005, CBP classified the Totally Together™ brand "Give Me a Helping Hand" manicure set which includes a pair of textile gloves and the Totally Together™ brand "On Your Feet" pedicure set which includes a pair of textile socks in subheading 8214.20.9000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for manicure and pedicure sets, and combinations thereof, in leather cases or other containers of types ordinarily sold therewith in retail sales: other." The textile gloves and socks were determined to be subject to quota/visa requirements.

Upon review of these rulings, CBP has determined that the subject manicure and pedicure kits are not GRI 1 sets, but classified separately.

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY L81820, dated January 11, 2005, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper tariff classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter 967739 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: August 3, 2006

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

Attachments

[ATTACHMENT A]

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

NY L81820

January 11, 2005
CLA–2–82:RR:NC:N1:118 L81820
CATEGORY: Classification
TARIFF NO.: 8214.20.9000

MS. MAUREEN HANNAH
ATLANTIC CUSTOMS BROKERS, INC.
1975 Linden Boulevard
Elmont, NY 11003

RE: The tariff classification of a manicure set and pedicure set from China.

DEAR MS. HANNAH:

In your letter, dated December 22, 2005, on behalf of your client, The W. E. Bassett Company, Shelton, CT, you requested a tariff classification ruling.

Totally Together™ brand "Give Me a Helping Hand" is a manicure set comprised of 1 nail brush, 1 cuticle pusher, 1 cuticle remover, 4 2-sided mini emery boards, 1 sapphire file, 1 4-step buffing block, and a pair of moisture gloves (constructed of 92% cotton, 8% spandex knit fabric). The manicure set is packed in a plastic pouch.

Totally Together™ brand "On Your Feet" is a pedicure set comprised of 1 nail brush, 3 cuticle sticks, 1 toenail clipper, 1 callus remover, 2 toenail separators, and a pair of moisture socks (92% cotton, 8% spandex knit fabric). The pedicure set is packed in a plastic pouch.

The applicable subheading for the manicure and pedicure sets will be 8214.20.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for manicure and pedicure sets, and combinations thereof, in leather cases or other containers of types ordinarily sold therewith in retail sales: other. The rate of duty will be 4.1 percent ad valorem.

The moisture gloves in the manicure set fall within textile category 331. The moisture socks in the pedicure set fall within textile category designation 332. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kathy Campanelli at 646–733–3021.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967739
CLA–2 RR:CTF:TCM 967739 TMF
CATEGORY: Classification
TARIFF NO.: 3924.90.55; 4417.00.80; 6805.20.00; 8214.20.30; 6116.92.6440; 6115.92.9000; 8214.90.90; 9603.29

JEFFREY MEEKS, ESQ.
MEEKS & SHEPPARD
1735 Post Road
Suite 4
Fairfield, Connecticut 06824

RE: Reconsideration of NY L81820, dated January 11, 2005; classification of Totally Together™ brand "Give Me a Helping Hand" manicure kit and Totally Together™ brand "On Your Feet" pedicure kit

DEAR MR. MEEKS:

This letter is in response to your request, on behalf of your client, W.E. Bassett Company, for reconsideration of New York Ruling Letter (NY) L81820, dated January 11, 2005.

On May 1, 2006, you requested on behalf of your client that we withdraw your client's request. However, in light of our review and determination that the classification was in error, we are revoking NY L81820.

Specifically, in NY L81820, two items were classified in subheading 8214.20.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for, in relevant part "[m]anicure and pedicure sets, and combinations thereof, in leather cases or other containers of types ordinarily sold therewith in retail sales: other", with requirements for quota/visa found applicable to the textile gloves and socks that were included in the sets. We have reviewed NY L81820 and find it to be in error. Therefore, this ruling revokes NY L81820.

FACTS:

NY L81820 describes the merchandise at follows:

Totally Together™ brand "Give Me a Helping Hand" is a manicure set comprised of 1 nail brush, 1 cuticle pusher, 1 cuticle remover, 4 2-sided mini emery boards, 1 sapphire file, 1 4-step buffing block, and a pair of moisture gloves (constructed of 92% cotton, 8% spandex knit fabric). The manicure set is packed in a plastic pouch.

Totally Together™ brand "On Your Feet" is a pedicure set comprised of 1 nail brush, 3 cuticle sticks, 1 toenail clipper, 1 callus remover [which does not file nails], 2 toenail separators, and a pair of moisture socks (92% cotton, 8% spandex knit fabric). The pedicure set is packed in a plastic pouch.

ISSUE:

Whether the subject Totally Together™ brand "Give Me a Helping Hand" and Totally Together™ brand "On Your Feet" products are GRI 1 sets?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) in accordance with the General Rules of

Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. When goods cannot be classified solely on the basis of GRI 1 and if the terms of the headings and any relative section or chapter notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

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

Heading 8214, provides, *eo nomine* for manicure and pedicure sets. EN 82.14 states that the heading includes, in pertinent part, scissors, non-metallic nail polishers, hair removing tweezers, etc., which if taken separately, would be classified in their respective headings.

We refer to the Informed Compliance Publication, *Classification of Sets Under HTSUS*, which states:

> In certain areas of the HTSUS, sets are specifically mentioned by name. The only requirements which are to be followed when dealing with a GRI 1 set are those mentioned in the particular HTSUS provisions describing the set, relevant chapter and section notes, and the relevant Explanatory Notes (ENs). . . . The rules with regard to GRI 3(b) sets, . . . do not apply to GRI 1 sets [footnote omitted.]

In this case, NY L81820 classified the goods as GRI 1 sets within heading 8214, HTSUSA. However, we have reviewed L81820 and determined that the decision was issued in error as neither of the two subject products are GRI 1 sets since they contain textile gloves and socks. The term "set" commonly is known to mean an item that contains goods which are put together for a particular purpose. Heading 8214, provides, *eo nomine* for manicure and pedicure sets. EN 82.14 states that the heading includes, in pertinent part, scissors, non-metallic nail polishers, hair removing tweezers, which if taken separately, would be classified in their respective heading. Although EN 82.14 refers to various implements used for cutting, sharpening, filing, extracting, it does not refer to textile goods such as the instant ones which were designed to cover the hands and feet and serve as barriers to seal in moisture.

Based upon our review of various manicure and pedicure sets, we believe that the subject articles are not GRI 1 manicure and pedicure sets as commonly or commercially known and sold in retail as they contain textile articles which are not *ejusdem generis* within the exemplars outlined in EN 82.14. As neither of the textile articles contained in the Totally Together™ brand samples were contemplated by this EN and textile articles serve a different purpose from the implements with which they are packaged, it is our view that the subject Totally Together™ brands are not GRI 1 sets.

With respect to the subject two samples, it is our view that they are not GRI 3(b) sets. GRI 3(b) provides:

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

In this instance, the various articles in the two samples are not put together for a particular need or activity. Although they are marketed as manicure/pedicure kits, we find that the textile gloves and socks are not customarily used in a manicure or pedicure. Thus, their inclusion precludes the instant samples from being GRI 3(b) sets. Rather, each article within both samples should be separately classified pursuant to GRI 1, HTSUS.

HOLDING:

Both Totally Together™ products, identified as "Give Me a Helping Hand" manicure products and "On Your Feet" pedicure products are classified separately pursuant to GRI 1 as follows:

Helping Hand:

-Nail Brush – is classifiable in subheading 9603.29, HTSUS, which provides, in pertinent part, for nail brushes. The general column one duty rate is as follows: If the merchandise is valued less than 40 cents each, the assessed duty rate is 0.2 cents each plus 7 percent *ad valorem*. If the merchandise is valued greater than 40 cents each, the assessed duty rate is 0.3 cents each plus 3.6 percent *ad valorem*.

-Cuticle Pusher/Cuticle Remover and Sapphire File – are classifiable in subheading 8214.20.30, HTSUS, which provides for, among other things, cuticle pushers and nail files. The general column one duty rate is 4 percent *ad valorem*.

-Mini Emery Boards – Since the base of the good is coated with abrasive powder or grain, classification is in subheading 6805.20.00, HTSUS, which provides for "Natural or artificial abrasive powder or grain, on a base of . . . paperboard . . . , whether or not cut to shape or sewn or otherwise made up." The general column one duty rate is FREE.

-Buffing Block – The block has four surfaces for buffing nails: two surfaces composed of an abrasive powder or grain (which is provided for in heading 6805), and two with smooth surfaces coated with plastic (which is provided for by heading 3924). As no surface imparts the essential character of the buffing block, pursuant to GRI 3(c), classification will be the heading that appears last in numerical order among those which equally merit consideration, which is heading 6805, HTSUS, which provides for "Natural or artificial abrasive powered or grain, on a base of textile material, of paper, of paperboard or of other materials, whether or not cut to shape or sewn or otherwise made up." The general column one duty rate is FREE.

-Moisture Gloves – are classifiable in subheading 6116.92.6440, HTSUS, which provides for other knitted or crocheted, cotton gloves made from a pre-existing machine knit fabric without fourchettes. The general column one duty rate is 23.5 percent *ad valorem*, quota category number is 331.

On Your Feet

-Nail Brush – is classifiable in subheading 9603.29, HTSUS, which provides, in pertinent part, for nail brushes. The general column one duty rate is as follows: If the merchandise is valued less than 40 cents each, the assessed duty rate is 0.2 cents each plus 7 percent *ad valorem*. If the merchandise is valued greater than 40 cents each, the assessed duty rate is 0.3 cents each plus 3.6 percent *ad valorem*.

-Cuticle Sticks – are classifiable in subheading 4417.00.80, which provides, in pertinent part for other tools of wood. The general column one duty rate is 5.1 percent *ad valorem*.

-Toenail Clipper – is classifiable in subheading 8214.20.30, HTSUS, which provides, in pertinent part, for nail clippers. The general column one duty is 4 percent *ad valorem*.

-Callus Remover – which does not file nails, is classifiable in subheading 8214.90.90, HTSUS, which provides for "other articles of cutlery . . . ; manicure or pedicure sets and instruments . . . ; base metal parts thereof: other: other." The general column one duty rate is 1.4 cents each plus 3.2 percent *ad valorem*.

-Toenail Separators – are classifiable in subheading 3924.90.55, HTSUS, which provides for "tableware, kitchenware, other household articles and toilet articles, of plastics: Other: Other." The general column one duty rate is 3.4 percent *ad valorem*.

-Moisture Socks – are classifiable in subheading 6115.92.9000, HTSUS, which provides, in pertinent part, for other cotton knitted or crocheted socks. The general column one duty rate is 13.5 percent *ad valorem*, quota category number is 332.

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

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP officer handling the transaction.

EFFECT ON OTHER RULINGS:

NY L81820, dated January 11, 2005 is hereby modified.

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

PROPOSED REVOCATION AND MODIFICATION OF TWELVE RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF BABIES' DRESSES WITH COORDINATING DIAPER COVERS.

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

ACTION: Proposed revocation and modification of twelve tariff classification ruling letters and revocation of treatment relating to the classification of babies' dresses with coordinating diaper covers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to revoke six ruling letters and modify six ruling letters relating to the tariff classification of babies' dresses with coordinating diaper covers under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical transactions.

DATE: Comments must be received on or before September 22, 2006.

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

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking 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, this notice advises interested parties that CBP is proposing to revoke six ruling letters and modify six ruling letters pertaining to the tariff classification of babies' dresses with coordinating diaper covers. Although in this notice, CBP is specifically referring to the modification of NY J89770, dated October 28, 2003, NY K81728, dated January 16, 2004, NY L81905, dated January 13, 2005, PD D81590, dated September 8, 1998, PD D81720, dated September 18, 1998 and PD C81744, dated December 4, 1997 and the revocation of NY J83409, dated April 25, 2003, NY D84595, dated December 7, 1998, NY L86100, dated July 13, 2005, PD E87307, dated October 12, 1999, PD E87250, dated October 8, 1999 and PD F80382, dated December 3, 1999 (Attachments A through L, respectively), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 advise 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 proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY K81728, CBP ruled, in part, that a babies' pullover dress and coordinating diaper cover were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the cited ruling is in error, and that the diaper cover

should be classified in subheading 6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets."

In NY D84595, CBP ruled that an infant's knit dress and matching diaper cover and scrungie were classified in subheading 6111.20.4000, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Dresses". Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the cited ruling is in error, and that the diaper cover and scrungie should be classified in subheading 6111.20.6030, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Other: Other, Other: Imported as parts of sets."

In NY J83409, CBP ruled that a cotton knit dress and coordinating diaper cover were classified in subheading 6111.20.4000, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Dresses." Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the diaper cover should be classified in subheading 6111.20.6030, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Other: Other, Other: Imported as parts of sets."

In NY J89770, CBP ruled, in part, that a cotton woven dress and coordinating diaper cover were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the diaper should be classified in subheading 6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets."

In NY L86100, CBP ruled that a knit velour polyester and cotton woven dress and coordinating velour diaper cover were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the diaper cover should be classified in subheading 6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets."

In NY L81905, CBP ruled, in part, that a cotton woven dress and coordinating diaper cover were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the diaper cover should be classified in subheading

6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets."

In PD D81590, CBP ruled, in part, that a cotton knit dress and coordinating diaper cover were classified in subheading 6111.20.4000, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Dresses." Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the diaper cover should be classified in subheading 6111.20.6030, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Other: Other, Other: Imported as parts of sets."

In PD D81720, CBP ruled, in part, that a cotton woven sundress and coordinating diaper cover were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the diaper cover should be classified in subheading 6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets."

In PD C81744, CBP ruled, in part, that two cotton woven dresses with coordinating diaper covers were classified in subheading 6209.20.1000, HTSUSA, which provide for "Babies' garments and clothing accessories: Of cotton: Dresses." Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the diaper covers should be classified in subheading 6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets."

In PD E87307, CBP ruled that a cotton woven dress and coordinating diaper cover were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the diaper cover should be classified in subheading 6111.20.6030, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Other: Other, Other: Imported as parts of sets."

In PD F80382, CBP ruled, in part, that a cotton woven dress and coordinating diaper cover and headband were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the diaper cover and headband should be classified in subheading 6209.20.5045, HTSUSA, which provides for "Ba-

bies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets."

In PD E87250, CBP ruled that a cotton twill dress and coordinating diaper cover were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the diaper cover should be classified in subheading 6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets."

In NY J83409, CBP ruled that a cotton knit dress and coordinating diaper cover were classified in subheading 6111.20.4000, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Dresses." Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the diaper cover should be classified in subheading 6111.20.6030, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Other: Other, Other: Imported as parts of sets."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY J89770, NY K81728, NY L81905, PD D81590, PD D81720, PD C81744 and revoke NY J83409, NY D84595, NY L86100, PD E87307, PD F80382, PD E87250 and any other ruling not specifically identified, to reflect the proper classification of babies' dresses with coordinating diaper covers according to the analysis contained in Headquarters Ruling Letters (HQ) 968097 through 968108, set forth as Attachments M through X, respectively, to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: August 3, 2006

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY J89770
October 28, 2003
CLA–2–62:RR:NC:TA:358 J89770
CATEGORY: Classification
TARIFF NO.: 6204.42.3040; 6204.42.3060;
6209.20.1000; 6211.42.0081

FIFI PUDJIJANTO GAP INC.
345 Spear Street
San Francisco, CA 94105

RE: The tariff classification of infants' and girls' dresses from India

DEAR MS. PUDJIJANTO:

In your letter dated October 17, 2003 you requested a classification ruling.

Each of submitted styles jmp448 and jmp313, manufactured from woven fabric of 100% cotton, of denim and of printed canvas, respectively, is comprised of two pieces. One of the pieces is a diaper cover, a panty-like garment, fully elasticized around the waistband and the leg openings. The other of these pieces is a full-length, pullover garment, characterized by A-line styling, by oversized armholes, by a rounded neckline, and by a vertical, zippered opening at the mid-section of the back.

As you have requested, the sample styles are being returned.

When sized for infants the applicable subheading for both styles will be 6209.20.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for babies' garments . . . , of cotton, dresses. The duty rate will be 11.9 per cent ad valorem. Your suggested classification under HTS 6209.20.5035 is precluded, since both of these pieces constitute an infants' dress.

When sized for larger girls the applicable subheading for the diaper covers of both styles will be 6211.42.0081, which provides for . . . other garments . . . girls' . . . of cotton, other. The duty rate will be 8.2 per cent ad valorem.

When sized for larger girls the other garment of style jmp448 will be classified under HTS 6204.42.3040, which provides for . . . girls' . . . dresses, of cotton, other, other, other, with two or more colors in the warp and/or the filling, girls'. The duty rate will be 8.8 per cent ad valorem. Your suggested classification under 6211.42.0060 is precluded because the garment might be worn without an underlying upperbody garment.

When sized for larger girls the other garment of style jmp313 will be classified under HTS 6204.42.3060, which provides for . . . girls' . . . dresses, of cotton, other, other, other, other, girls'. The duty rate will be 8.8 per cent ad valorem. Your suggested classification under 6211.42.0060 is precluded because the garment might be worn without an underlying upperbody garment.

In infants' sizes both pieces of both of the styles fall within textile category designation 239, and in sizes for larger girls within 359 for the diaper covers and within 336 for the dresses. Based upon international textile trade agreements products of India are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the Textile Status Report for Absolute Quotas, which is available at our Web site at www.cbp.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kirschner at 646–733–3048.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY K81728
January 16, 2004
CLA–2–62:RR:NC:TA:358 K81728
CATEGORY: Classification
TARIFF NO.: 6204.42.3040; 6209.20.1000; 6211.42.0081

SHERRI DESJARDINS
MENLO WORLDWIDE TRADE SERVICES
P.O. Box 610715
Dallas, TX 75261

RE: The tariff classification of infants' and toddler girls' wear from India

DEAR MS. DESJARDINS:

In your letter dated January 12, 2004, written on behalf of Oshkosh B'Gosh, you requested a classification ruling.

Submitted style G9151A is comprised of two pieces, each of which is manufactured from gingham fabric of 100% cotton. One of these pieces is a panty-like garment, fully elasticized around the waistband. To be worn over this garment is the other of these two pieces, a wide-skirted, sleeveless, pullover dress, styled by narrow shoulder straps, extending from the elasticized, smocked portion of the straight-cut back, which fasten by means of buttons to the bib-front.

When sized for infants the applicable subheading for both garments of this style will be 6209.20.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for babies' garments . . . of cotton, dresses; and when sized for toddlers the applicable subheading for the panty-like gar-

ment of this style will be 6211.42.0081, which provides for . . . other garments . . . girls', of cotton, other, and for the sleeveless garment of this style will be 6204.42.3040, which provides for . . . girls' . . . dresses . . . , of cotton, other, other, other, with two or more colors in the warp and/or the filling, girls'. The duty rates will be 11.8, 8.1, and 8.4 percent ad valorem, respectively.

In infants' sizes this style falls within textile category designation 239, and in sizes for toddlers the panty-like garment falls within 359 and the dress falls within 336. Based upon international textile trade agreements products of India are subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the Textile Status Report for Absolute Quotas, which is available at our Web site at www.cbp.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kirschner at 646–733–3048.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY L81905
January 13, 2005
CLA–2–62:RR:NC:TA:358 L81905
CATEGORY: Classification
TARIFF NO.: 6204.42.3060; 6209.20.1000

DAVID J. EVAN
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP
399 Park Avenue
New York, NY 10022–4877

RE: The tariff classification of girls' dresses from Indonesia

DEAR MR. EVAN:

In your letter dated January 6, 2005, written on behalf of Ann Taylor, you requested a classification ruling.

Submitted style 119235, manufactured from printed, woven fabric of 100% cotton, is an unlined, sleeveless, scoop-necked, a-line, empire-styled dress,

buttoning together at the center of the upper back. Submitted style 119237 for infants differs by the addition of a matching panty-like garment, elasticized around the waistband and around the leg openings.

As you have requested, the sample styles are being returned.

The applicable subheading for style 119235 will be 6204.42.3060, Harmonized Tariff Schedule of the United States (HTS), which provides for . . . girls' . . . dresses . . . of cotton, other, other, other, other, girls'; and for style 119237 will be 6209.20.1000, HTS, which provides for babies' garments . . . of cotton, dresses. The duty rates will be 8.4 and 11.8 percent ad valorem, respectively.

The infants' dress falls within textile category designation 239 and the larger sized dress within 336. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kirschner at 646–733–30348.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
PD D81590
September 8, 1998
CLA–2–61:SF:G03 D81590
CATEGORY: Classification
TARIFF NO.: 6111.20.4000, 6114.20.0015

MARY L. IRISH
TALBOTS
175 Beal Street
Hingham, MA 02043

RE: The tariff classification of wearing apparel from Macau

DEAR MS. IRISH:

In your letter dated August 20, 1998 you requested a tariff classification ruling.

The first submitted sample, style 91141455, is made from a patterned knit fabric which you state is 97% cotton and 3% spandex. This style consists of a pullover dress and panty. The dress has short sleeves, a scoop front neckline and a full skirt. The sleeves and neck are finished with a band of self fabric capping. The skirt bottom is hemmed. There are 2 patch pockets on the skirt front. The matching panty portion of this style is a pull-on diaper cover with an enclosed elastic waistband and leg openings. You indicate that this style will be sold in babies sizes 6,12,18 and 24 months.

The second submitted sample, style 91192452 is a jumper made from a fine french terry fabric which you state is 95% cotton and 5% spandex. It is sleeveless with a scoop front neckline, oversized armholes and full skirt. A button hole on each back shoulder strap is buttoned onto a button sewn to the top of each front strap. All edges are hemmed. You indicate that this jumper will be advertised and displayed with a shirt underneath, and that it will be sold in girls' sizes 2,3,4,5,6 and 6X. The applicable subheading for the babies' dress will be 6111.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Dresses. The rate of duty will be 11.9 percent ad valorem.

The applicable subheading for the girls' jumper will be 6114.20.0015, HTS, which provides for Other garments, knitted or crocheted: Of cotton: Jumpers. The rate of duty will be 11.2 percent ad valorem.

The babies dress falls within textile category designation 239 and the jumper within category 359. Based upon international textile trade agreements, products of Macau are subject to the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

In accordance with your request your samples will be returned to you under separate cover.

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

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

ALICE M. RIGDON,
Port Director,
San Francisco.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
PD D81720
September 18, 1998
CLA–2–62:SF G03 D81720
CATEGORY: Classification
TARIFF NO.: 6204.42.3060, 6209.20.1000,
6211.42.0081

LUDENE MUPHEREE
GAP INC.
One Harrison Street
San Francisco, CA 94105

RE: The tariff classification of babies' and girl's garments from China

DEAR MS. MUPPHREE:

In your letter dated August 24, 1998 you requested a tariff classification ruling.

Style 477386 is made from a woven printed pique fabric which you state is 100% cotton. This style consists of two garments. The first is a sleeveless sundress with a partial back opening secured by 4 plastic buttons. This garment has a bib top in both the front and back, a square neckline in both the front and back and narrow shoulder straps. The gathered skirt portion is hemmed. The second garment is a diaper cover of identical fabric. This diaper cover has an elasticized waist and leg openings. You have indicated that this style will be imported in both babies' and toddler's sizes.

The applicable subheading for the dress and diaper cover in the babies' sizes will be 6209.20.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for Babies' garments and clothing accessories: Of cotton: Dresses. The rate of duty will be 12.3 percent ad valorem.

The applicable subheading for the dress in toddler sizes will be 6204.42.3060, HTS, which provides for Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Dresses: Of cotton: Other:

Other: Other: Other; Girls'. The rate of duty will be 10.9 percent ad valorem.

The applicable subheading for the diaper cover in toddler sizes will be 6211.42.0081, HTS, which provides for Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton: Other. The rate of duty will be 8.4 percent ad valorem. The babies' dress and diaper cover fall within textile category designation 239; the toddler dress within category 336; the diaper cover within category 359. Based upon international textile trade agreements, products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas

(Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

In accordance with your request your samples will be returned to you under separate cover.

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

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

ALICE M. RIGDON,
Port Director,
San Francisco.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
PD C81744
December 4, 1997
CLA–2–62:SF G03 C81744
CATEGORY: Classification
TARIFF NO.: 6204.42.3040, 6204.42.3060, 6204.49.5060, 6209.20.1000, 6209.20.5050, 6209.90.9000, 6211.42.0060, 6211.42.0081, 6211.49.9090

LUDENE MURPHREE
GAP, INC.
Two Harrison Street
San Francisco, CA 94105

RE: The tariff classification of babies' dresses, jumpers and girls' dresses, diaper covers and jumpers from Hong Kong, India, and Indonesia

DEAR MS. MURPHREE:

In your letter dated November 13, 1997 you requested a tariff classification ruling on several styles of sleeveless dresses and jumpers which will be imported in sizes to fit both babies and toddlers.

Style 312485 and Style 312487 are both sun dresses, which share common features. They each have narrow straps, a scoop neckline in both the front and back and a smocked front bodice, and a 3 button closure in the back. The skirt portions are gathered and the bottoms are finished by hemming. These styles will be sold with a matching diaper cover which has an elasticized waist and leg openings. While both styles are made from woven fabrics which you state are 100% cotton, style 312485 is primarily made from fabrics of solid colors and style 312487 is made from a plaid fabric.

These styles will be made in India.

Style 312489A is a jumper with a scoop neckline in both the front and back and a 3 button closure in the back. The skirt portion is a very full flared skirt with a narrow hemmed edge. The garment is made from a

printed woven fabric which you state is 100% cotton. This style will be made in Indonesia.

Style 312504 and Style 312505 are both sleeveless dresses, which share common features. The each have a scoop neckline in both the front and back. The skirt portions are gathered and both styles are sold with a diaper cover which has an elasticized waist and leg openings. Style 312504 has embroidery on the lower third of the skirt portion and the bottom is finished with a scalloped embroidered edge. There is a small self fabric bow permanently attached to the center front at the waist. You state that this style is made from a woven fabric which is 100% linen. This style will be made in Hong Kong. Style 312505 has embroidery on the upper front bodice and skirt is finished by hemming. You state that this style is made from a woven fabric which is 55% linen and 45% cotton. This style will be made in India.

The applicable subheading for both Styles 312485 and 312487 in babies' sizes will be 6209.20.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for Babies' garments and clothing accessories: Of cotton: Dresses. The rate of duty will be 12.4 percent ad valorem. The applicable subheading for Style 312485 dress in toddler's sizes will be 6204.42.3060, HTS, which provides for Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear):

Dresses: Of cotton: Other: Other: Other: Other: Girls'. The applicable subheading for Style 312487 dress in toddler's sizes will be 6204.42.3040, HTS, which provides for as above, except for Other: With two or more colors in the warp and/or filling:

Girls'. For both, the rate of duty will be 11.3 percent ad valorem. The applicable subheading for the diaper cover for both of these styles in toddler's sizes will be 6211.42.0081, HTS, which provides for Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of cotton: Other. The rate of duty will be 8.4 percent ad valorem.

The applicable subheading for Style 312489A in babies' sizes will be 6209.20.5050, HTS, which provides for Babies' garments and clothing accessories: Of cotton: Other: Other: Other. The rate of duty will be 9.7 percent ad valorem. The subheading for this style in toddler's sizes will be 6211.42.0060, HTS, which provides for Track suits, ski-suits and swimwear; other garments:

Other garments, women's or girls': Of cotton: Jumpers. The rate of duty will be 8.4 percent ad valorem.

The applicable subheading for both Styles 312504 and 312505 in babies' sizes will be 6209.90.9000, HTS, which provides for Babies' garments and clothing accessories: Of other textile materials: Other. The rate of duty will be 16.4 percent ad valorem. In toddler's sizes the applicable HTS for the dresses will be 6204.49.5060, which provides for Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear): Dresses: Of other textile materials:

Other: Other. The rate of duty will be 7.3 percent ad valorem. The applicable HTS for the diaper covers for both of these styles in toddler's sizes will be 6211.49.9090, HTS, which provides for Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of other textile materials: Other:

Other. The rate of duty will be 7.6 percent ad valorem. In babies' sizes Styles 312485, 312487 and 312489A fall within textile category designation 239 and Styles 312504 and 312505 within category 839. In toddler's sizes Styles 312485 and 312487 dresses fall within category 336, while the diaper covers fall within category 359. Style 312489A in toddler's sizes falls within category 359 as well. Styles 312504 and 312505 dresses in toddler's sizes fall within category 836, while the diaper covers fall within category 859. Based upon international textile trade agreements, products of Hong Kong, India and Indonesia are subject to quota and the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the U.S. Customs Service, which is available for inspection at your local Customs office.

In accordance with your request your sample will be returned to you under separate cover.

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

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

ALICE M. RIGDON,
Port Director,
San Francisco.

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY J83409
April 25, 2003
CLA–2–61:RR:NC:TA:358 J83409
CATEGORY: Classification
TARIFF NO.: 6111.20.4000

KAREN RIGGS
TALBOTS
174 Beal Street
Hingham, MA 02043

RE: The tariff classification of infants' wearing apparel from China

DEAR MS. RIGGS:

In your letter dated April 15, 2003 you requested a classification ruling.

Submitted style 35587006 is comprised of two pieces. One of these pieces, manufactured from finely knitted fabric of 100% cotton, is a panty-like garment, fully elasticized around the waistband and around the leg openings, which will be worn under the other of the pieces comprising this style. This

other piece of style 35587006 is a dress, the long sleeves and bodice of which are manufactured from knitted, low-gauge fabric of 100% cotton, and the skirt portion of which is manufactured from finely knitted fabric of 100% cotton. The skirt portion is overlaid by sheer mesh fabric of 100% polyester.

As you have requested, the sample garment is being returned.

The applicable subheading for this style will be 6111.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for babies' garments and clothing accessories, of cotton, dresses. The duty rate will be 11.6 per cent ad valorem.

This style falls within textile category designation 239. Based upon international textile trade agreements products of China may be subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the Textile Status Report for Absolute Quotas, which is available at our Web site at www.cbp.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kirschner at 646–733–3048.

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

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY D84595
December 7, 1998
CLA–2–61:RR:NC:TA:N3:358 D84595
CATEGORY: Classification
TARIFF NO.: 6111.20.4000

MS. HAZEL D. ERICTA
C.F.L. SPORTSWEAR TRADING, INC.
350 Fifth Avenue, Suite 4010
New York, NY 10118

RE: The tariff classification of an infant's dress, panty and scrungie from Macau.

DEAR MS. ERICTA:

In your letter dated September 29, 1998, you requested a tariff classification ruling.

The submitted sample, Style #3F99022000B Sub 346, is an infant's knit dress with matching panty and scrungie. The bodice is constructed of 100% cotton knit fabric and features a rib knit scoop neckline, and short sleeves. The skirt portion is constructed of 75% cotton, 25% polyester jacquard terry knit fabric. The raised loops form allover heart shaped pile designs on the ground fabric. The skirt portion features gathers at the high waist, and a hemmed bottom. The panty is constructed of the same fabric as the bodice portion of the dress, and features an elasticized waist, and elasticized leg openings. The scrungie is elasticized and is constructed of the same fabric as the skirt portion of the dress.

The dress, panty and scrungie are a retail set classifiable in the provision for the dress, the component which imparts the essential character.

You state in your letter that the dress, panty and scrungie will be imported in infants' sizes 12–24 months. The applicable subheading for the dress, panty and scrungie, Style #3F99022000B Sub 346, will be 6111.20.4000, Harmonized Tariff Schedule of the United States (HTS), which provides for babies' garments and clothing accessories, knitted or crocheted, of cotton, dresses. The duty rate will be 11.9% ad valorem.

The dress, Style #3F99022000B falls in textile category designation 239. Based upon international textile trade agreements, products of Macau are presently subject to visa requirements.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Bruce Kirschner at 212–466–5865.

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

[ATTACHMENT I]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY L86100
July 13, 2005
CLA–2–62:RR:NC:TA:358 L86100
CATEGORY: Classification
TARIFF NO.: 6209.20.1000

PATTI CORDO
AMERICAN CARGO EXPRESS, INC.
435 Division Street
Elizabeth, NJ 07201

RE: The tariff classification of a dress and diaper cover for infants from China

DEAR MS. CORDO:

In your letter dated July 7, 2005, written on behalf of CWF USA, Inc., you requested a classification ruling.

Submitted style K170 is comprised of two pieces. One of the pieces is a loose-fitted, empire-styled, short-sleeved dress, manufactured from a bodice of knitted velour of 100% polyester and from a twill skirt of 100% cotton. To be worn beneath this dress is the other of these pieces, a panty-like garment, manufactured from the same velour fabric as part of the dress.

As you have requested, the sample style is being returned.

The applicable subheading for both pieces of this style will be 6209.20.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for babies' garments and clothing accessories, of cotton, dresses. The duty rate will be 11.8 percent ad valorem.

This style falls within textile category designation 239. Quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information as to whether quota and visa requirements apply to this merchandise, we suggest that you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas" available at our web site at www.cbp.gov. In addition, you will find current information on textile import quotas, textile safeguard actions and related issues at the web site of the Office of Textiles and Apparel, at otexa.ita.doc.gov.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kirschner at 646–733–3048.

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

[ATTACHMENT J]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
PD E87307 October 12, 1999
CLA–2–62: G03 E87307
CATEGORY: Classification
TARIFF NO.: 6209.20.1000

LUDENE MURPHREE
IMPORT COMPLIANCE MANAGER
GAP INC.
One Harrrison Street
San Francisco, CA 94105

RE: The tariff classification of a baby' dress and diaper cover from Sri Lanka

DEAR MS. MURPHREE:

In your letter dated September 27, 1999, you requested a tariff classification ruling.

Style 196351 is made from a lightweight woven fabric that you state is 100% cotton denim. This style is a sleeveless dress with a partial back opening secured by 3 metal snaps, a slightly scoop neckline in the front and a round neckline in the back. The skirt portion is gathered. The neckline and armholes are finished with capping; the bottom is hemmed. A pull-on diaper cover will be imported with this dress. The diaper cover, made from the same fabric, has elasticized leg openings and a covered elastic waistband. You have indicated that style 196351 will be imported in baby sizes 0–3 and 6–12 months.

The applicable subheading for the dress will be 6209.20.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for Babies' garments and clothing accessories: Of cotton: Dresses. The rate of duty will be 12.2 percent ad valorem.

This dress and diaper cover falls within textile category designation 239. Based upon international textile trade agreements, products of in this category and tariff number are not subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.USTREAS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

In accordance with your request, your samples will be returned to you under separate cover.

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

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

ALICE M. RIGDON,
Port Director,
San Francisco.

[ATTACHMENT K]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
PD E87250
October 8, 1999
CLA-2–62:A:P: G34 E87250
CATEGORY: Classification
TARIFF NO.: 6209.20.1000

TERESA A. RAFFA
ASSOCIATED MERCHANDISING CORPORATION
1440 Broadway
New York, NY 10018

RE: The tariff classification of an infant's dress set from India

DEAR MS. RAFFA:

In your letter dated September 19, 1999, you requested a tariff classification ruling.

The submitted samples, style S01–3602, are an infant's dress and panty made of 100 percent cotton twill fabric. The sleeveless dress features a Peter Pan collar, a full frontal opening with a six-button closure, a gathered skirt sewn to the bodice, two patch pockets below the waist, and a hemmed bottom. The collar, armholes, and pockets are finished with rickrack trim. The matching panty has an elasticized waist and gathered leg openings with a straight band in the front and an elasticized band in back. The leg openings are finished with rickrack trim. The garment will be imported in infants' sizes 12 to 24 months.

The dress and panty are a retail set classifiable in the provision for the dress, the component which imparts the essential character. The applicable subheading for the dress set will be 6209.20.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for babies' garments and clothing accessories, of cotton, dresses. The rate of duty will be 12.2 percent ad valorem.

The samples will be returned to you as requested.

The dress set falls within textile category designation 239. Based upon international textile trade agreements, as products from India, this merchandise is presently not subject to quota and the requirement of a visa.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Ser-

vice, which is available at the Customs Web Site at WWW.CUSTOMS.USTREAS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

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

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

ANITA TERRY-MCDONALD,
Port Director,
Atlanta, GA.

[ATTACHMENT L]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
PD F80382
December 3, 1999
CLA–2–62:LA:S:T:1:2:G04 F80382
CATEGORY: Classification
TARIFF NO.: 6209.20.1000

MS. SARALEE ANTRIM-SAIZAN
CUSTOMS COMPLIANCE ADMINISTRATOR
CARMICHAEL INTERNATIONAL SERVICE
533 Glendale Boulevard
Los Angeles, CA 90026–5097

RE: The tariff classification of an infant's dress, panty, and headband set from Thailand

DEAR MS. ANTRIM-SAIZAN:

In your letter dated November 24, 1999, on behalf of Shopko Stores, you requested a tariff classification ruling.

The submitted sample, style 0209210, is an infant's three-piece set consisting of a dress, panty, and headband. All three items are constructed from 100% cotton woven fabric. The dress is sleeveless and features a round neckline, a partial back opening with three button closures, a gathered waist, and a hemmed bottom. The panty features an elasticized waistband and elasticized leg openings. The headband is elasticized and is ornamented with a small satin bow. The dress set will be imported in newborn and infant sizes. The dress, panty, and headband are a retail set classifiable in the provision for the dress, the component which imparts the essential character.

Your sample will be returned as requested.

The applicable subheading for the dress, panty, and headband set will be 6209.20.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for babies' garments and clothing accessories: of cotton: dresses. The rate of duty will be 12.2% ad valorem.

The dress set falls within textile category designation 239. As a product of Thailand, this merchandise is not subject to a visa requirement or quota restraints based upon international textile trade agreements.

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

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

IRENE JANKOV,
Port Director,
Los Angeles-Long Beach Seaport.

[ATTACHMENT M]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968097
CLA–2 RR:CTF:TCM 968097 KSH
CATEGORY: Classification
TARIFF NO.: 6209.20.1000, 6209.20.5045

LUDENE MURPHREE
GAP, INC.
345 Spear Street
San Francisco, CA 94105

RE: Modification of Port Decision Letter (PD) C81744, dated December 4, 1997; Classification of infants' wear from India.

DEAR MS. MURPHREE:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered Port Decision Letter (PD) C81744, issued to you on December 4, 1997, concerning the classification, in part, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of infant's cotton woven sundresses and coordinating diaper covers. The articles were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses". We have reviewed that ruling and found it to be in error as it pertains to the classification of the infants' sundresses and coordinating diaper covers. Therefore, this ruling modifies PD C81744.

FACTS:

The garments at issue, identified as Style 312485 and Style 312487 are both sundresses, which share common features. They each have narrow straps, a scoop neckline in both the front and back and a smocked front bodice, and a 3 button closure in the back. The skirt portions are gathered and the bottoms are finished by hemming. These styles will be sold with a matching diaper cover which has an elasticized waist and leg openings. While both styles are made from woven fabrics which were stated to be 100% cotton, style 312485 is primarily made from fabrics of solid colors and style 312487 is made from a plaid fabric. The garments are made in India.

ISSUE:

Whether the infants' dress sets are classified individually pursuant to Note 13 to Section XI, HTSUSA, as sets pursuant to Additional U.S. Note 1 to Chapter 62, HTSUSA, or as sets under General Rule of Interpretation 3(b) with the dress imparting the essential character.

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. It is Customs and Border Protections' (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 13 to Section XI, HTSUSA, requires textile garments of different headings be separately classified in their own headings even if put up in sets for retail sale unless the context otherwise requires. For purposes of Note 13, the expression "textile garments" means garments of headings 6101 to 6114 and headings 6201 to 6211.

Classification of goods through the six digit (international subdivision) level is accomplished by application of the General Rules of Interpretation (GRI) and relative section and chapter notes. The provisions at issue are as follows:

6209	Babies' garments and clothing accessories
6209.20	Of cotton:
6209.20.1000	Dresses
	Other:
6209.20.50	Other,
	Other:
6209.20.5045	Imported as parts of sets
6209.20.5050	Other

The dresses and diaper covers at issue fall under the same subheading, 6209.20, HTSUS, which provides for babies' garments and clothing accessories of cotton.

GRI 6 provides that for legal purposes, 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**. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level. Since GRI 6 uses the phrase "for

legal purposes" the preceding GRIs are to be applied at the level necessary for the final legal classification of the goods for tariff purposes.

By application of GRI 6 and following Note 13 to Section XI, HTSUSA, the dresses and diaper covers at issue are separately classified because they fall under different subheadings at the eight digit subheading level. Accordingly, the dresses are classifiable under subheading 6209.20.10, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The diaper covers are classifiable under subheading 6209.20.50, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other."

At the statistical level, the diaper covers are potentially classifiable under subheading 6209.20.5045, as imported as parts of sets or subheading 6209.20.5050, HTSUSA, as other. Additional U.S. Note 1 to Chapter 62, HTSUSA, states:

> For the purpose of heading 6209, the term "sets" means two or more different garments of headings 6111, 6209 or 6505 imported together, of corresponding sizes and intended to be worn together by the same person.

As the diaper covers are intended to be worn with the dresses as a part of a set, they are classified in subheading 6209.50.5045, HTSUSA.

Our decision is consistent with prior rulings in which CBP determined classification of babies' garment sets was governed by Note 13 to Section XI, HTSUSA, and GRI 6 where the components were classified in different subheadings at the six and eight digit level. In HQ 083685, dated March 2, 1989, CBP addressed the issue of the classification of babies' garment sets containing two or more different garments of different textile compositions. In that ruling, CBP held that by application of Note 13 to Section XI, HTSUSA, the babies' garments at issue therein were classified in their own subheadings even if put up in sets for retail sale. See also, HQ 085298, dated November 13, 1989 and HQ 951883, dated September 18, 1992.

HOLDING:

By application of GRI 1, HTSUSA, the cotton dresses and diaper covers are classified in heading 6209, HTSUSA. The dresses are specifically provided for in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The general column one rate of duty is 11.8% *ad valorem*. By the same authority and additional US note 1 to Chapter 62, HTSUSA, the diaper covers are provided for in subheading 6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets." The general column one rate of duty is 9.3% *ad valorem*.

Merchandise classified in subheadings 6209.20.1000 and 6209.20.5045, HTSUSA, falls within textile category 239. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web cite at www.cbp.gov. For current information regarding possible textile safeguard actions on goods

from China and related issues, we refer you to the web cite of the Office of Textiles and Apparel of the Department of Commerce at http://otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:
PD C81744 is hereby modified.

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

[ATTACHMENT N]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968098
CLA–2 RR:CR:TE 968098 KSH
CATEGORY: Classification
TARIFF NO.: 6209.20.1000, 6209.20.5045

MS. SARALEE ANTRIM-SAIZAN
CUSTOMS COMPLIANCE ADMINISTRATOR
CARMICHAEL INTERNATIONAL SERVICE
533 Glendale Boulevard
Los Angeles, CA 90026–5097

RE: Revocation of Port Decision Letter (PD) F80382, dated December 3, 1999; Classification of infants' wear from Thailand.

DEAR MS. ANTRIM-SAIZAN:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered Port Decision Letter (PD) F80382, issued to you on December 3, 1999, on behalf of your client Shopko Stores, concerning the classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of an infant's cotton woven dress, coordinating diaper cover and headband. The articles were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses". We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes PD F80382.

FACTS:

The garments at issue, identified as style 0209210, is an infant's three-piece set consisting of a dress, diaper cover, and headband. All three items are constructed from 100% cotton woven fabric. The dress is sleeveless and features a round neckline, a partial back opening with three button closures, a gathered waist, and a hemmed bottom. The diaper cover features an elasticized waistband and elasticized leg openings. The headband is elasticized and is ornamented with a small satin bow. The dress set will be imported in newborn and infant sizes.

ISSUE:

Whether the infants' dress sets are classified individually pursuant to Note 13 to Chapter 62, HTSUSA, as sets pursuant to Additional U.S. Note 1

to Chapter 62, HTSUSA, or as sets under General Rule of Interpretation 3(b) with the dress imparting the essential character.

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. It is Customs and Border Protections' (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 13 to Section XI, HTSUSA, requires textile garments of different headings be separately classified in their own headings even if put up in sets for retail sale unless the context otherwise requires. For purposes of Note 13, the expression "textile garments" means garments of headings 6101 to 6114 and headings 6201 to 6211.

Classification of goods through the six digit (international subdivision) level is accomplished by application of the General Rules of Interpretation (GRI) and relative section and chapter notes. The provisions at issue are as follows:

6219	Babies' garments and clothing accessories
6209.20	Of cotton:
6209.20.1000	Dresses
	Other:
6209.20.50	Other,
	Other:
6209.20.5045	Imported as parts of sets
6209.20.5050	Other

The dress, diaper cover and headband at issue fall under the same subheading, 6209.20, HTSUS, which provides for babies' garments and clothing accessories of cotton.

GRI 6 provides that for legal purposes, 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**. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level. Since GRI 6 uses the phrase "for legal purposes" the preceding GRIs are to be applied at the level necessary for the final legal classification of the goods for tariff purposes.

By application of GRI 6 and following Note 13 to Section XI, HTSUSA, the dress and diaper cover at issue are separately classified because they fall

under different subheadings at the eight digit subheading level. Accordingly, the dress is classifiable under subheading 6209.20.10, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The diaper cover is classifiable under subheading 6209.20.50, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other."

At the statistical level, the diaper cover and headband are potentially classifiable under subheading 6209.20.5045, as imported as parts of sets or subheading 6209.20.5050, HTSUSA, as other. Additional U.S. Note 1 to Chapter 62, HTSUSA, states:

> For the purpose of heading 6209, the term "sets" means two or more different garments of headings 6111, 6209 or 6505 imported together, of corresponding sizes and intended to be worn together by the same person.

As the diaper cover and headband are intended to be worn with the dress as a part of a set, they are classified in subheading 6209.50.5045, HTSUSA.

Our decision is consistent with prior rulings in which CBP determined classification of babies' garment sets was governed by Note 13 to Section XI, HTSUSA, and GRI 6 where the components were classified in different subheadings at the six and eight digit level. In HQ 083685, dated March 2, 1989, CBP addressed the issue of the classification of babies' garment sets containing two or more different garments of different textile compositions. In that ruling, CBP held that by application of Note 13 to Section XI, HTSUSA, the babies' garments at issue therein were classified in their own subheadings even if put up in sets for retail sale. See also, HQ 085298, dated November 13, 1989 and HQ 951883, dated September 18, 1992.

HOLDING:

By application of GRI 1, HTSUSA, the cotton dress, diaper cover and headband are classified in heading 6209, HTSUSA. The dress is specifically provided for in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The general column one rate of duty is 11.8% *ad valorem*. By the same authority and additional US note 1 to Chapter 62, HTSUSA, the diaper cover and headband are provided for in subheading 6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets." The general column one rate of duty is 9.3% *ad valorem*.

Merchandise classified in subheadings 6209.20.1000 and 6209.20.5045, HTSUSA, falls within textile category 239. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web cite at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web cite of the Office of Textiles and Apparel of the Department of Commerce at http://otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:
PD F80382 is hereby revoked.

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

[ATTACHMENT O]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968099
CLA–2 RR:CR:TE 968099 KSH
CATEGORY: Classification
TARIFF NO.: 6111.20.4000, 6111.20.6030

MS. HAZEL D. ERICTA
C.F.L. SPORTSWEAR TRADING, INC.
350 Fifth Avenue, Suite 4010
New York, NY 10118

RE: Revocation of New York Ruling Letter (NY) D84595, dated December 7, 1998; Classification of infants' wear from Macau.

DEAR MS. ERICTA:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) D84595, issued to you on December 7, 1998, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of an infant's knit dress, scrungie and coordinating diaper cover. The articles were classified in subheading 6111.20.4000, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Dresses". We have reviewed that ruling and found it to be in error as it pertains to the classification of the infants' pullover dress and coordinating diaper cover. Therefore, this ruling revokes NY D84595.

FACTS:

The garments at issue, identified as Style #3F99022000B Sub 346, consist of an infant's knit dress with matching diaper cover and scrungie. The dress bodice is constructed of 100% cotton knit fabric and features a rib knit scoop neckline, and short sleeves. The skirt portion is constructed of 75% cotton, 25% polyester jacquard terry knit fabric. The raised loops form allover heart shaped pile designs on the ground fabric. The skirt portion features gathers at the high waist, and a hemmed bottom. The diaper cover is constructed of the same fabric as the bodice portion of the dress, and features an elasticized waist and elasticized leg openings. The scrungie is elasticized and is constructed of the same fabric as the skirt portion of the dress. The dress, panty and scrungie are imported in infants' sizes 12–24 months.

ISSUE:

Whether the infants' dress sets are classified individually pursuant to Note 13 to Section XI, HTSUSA, as sets pursuant to Additional U.S. Note 1

to Chapter 61, HTSUSA, or as sets under General Rule of Interpretation 3(b) with the dress imparting the essential character.

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. It is Customs and Border Protections' (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 13 to Section XI, HTSUSA, requires textile garments of different headings be separately classified in their own headings even if put up in sets for retail sale unless the context otherwise requires. For purposes of Note 13, the expression "textile garments" means garments of headings 6101 to 6114 and headings 6201 to 6211.

Classification of goods through the six digit (international subdivision) level is accomplished by application of the General Rules of Interpretation (GRI) and relative section and chapter notes. The provisions at issue are as follows:

6111	Babies' garments and clothing accessories, knitted or crocheted:
6111.20	Of cotton:
6111.20.4000	Dresses
	Other:
6111.20.60	Other,
	Other:
6111.20.6030	Imported as parts of sets
6111.20.6070	Other

The dress, diaper cover and scrungie at issue fall under the same subheading, 6111.20, HTSUS, which provides for babies' garments and clothing accessories, knitted or crocheted of cotton.

GRI 6 provides that for legal purposes, 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**. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level. Since GRI 6 uses the phrase "for legal purposes" the preceding GRIs are to be applied at the level necessary for the final legal classification of the goods for tariff purposes.

By application of GRI 6 and following Note 13 to Section XI, HTSUSA, the dress and diaper cover at issue are separately classified because they fall under different subheadings at the eight digit subheading level. Accordingly, the dress is classifiable under subheading 6111.20.40, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Dresses." The diaper cover is classifiable under subheading 611.20.60, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Other: Other."

At the statistical level, the diaper cover and scrungie are potentially classifiable under subheading 6111.20.6030, as imported as parts of sets or subheading 6111.20.6070, HTSUSA, as other. Additional U.S. Note 1 to Chapter 61, HTSUSA, states:

> For the purpose of heading 6111, the term "sets" means two or more different garments of headings 6111, 6209 or 6505 imported together, of corresponding sizes and intended to be worn together by the same person.

As the diaper cover and scrungie are intended to be worn with the dress as a part of a set, they are classified in subheading 6111.20.6030, HTSUSA.

Our decision is consistent with prior rulings in which CBP determined classification of babies' garment sets was governed by Note 13 to Section XI, HTSUSA, and GRI 6 where the components were classified in different subheadings at the six and eight digit level. In HQ 083685, dated March 2, 1989, CBP addressed the issue of the classification of babies' garment sets containing two or more different garments of different textile compositions. In that ruling, CBP held that by application of Note 13 to Section XI, HTSUSA, the babies' garments at issue therein were classified in their own subheadings even if put up in sets for retail sale. See also, HQ 085298, dated November 13, 1989 and HQ 951883, dated September 18, 1992.

HOLDING:

By application of GRI 1, HTSUSA, the cotton dress and diaper cover are classified in heading 6111, HTSUSA. The dress is specifically provided for in subheading 6111.20.4000, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Dresses." The general column one rate of duty is 11.5% *ad valorem*. By the same authority and additional US note 1 to Chapter 61, HTSUSA, the diaper cover and scrungie are provided for in subheading 6111.20.6030, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Other: Other, Other: Imported as parts of sets." The general column one rate of duty is 8.1% *ad valorem*.

Merchandise classified in subheadings 6111.20.4000 and 6111.20.6030, HTSUSA, falls within textile category 239. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web cite at www.cbp.gov. For current information regarding possible textile safeguard actions on goods

from China and related issues, we refer you to the web cite of the Office of Textiles and Apparel of the Department of Commerce at http://otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

NY D84595 is hereby revoked.

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

[ATTACHMENT P]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968100
CLA–2 RR:CR:TE 968100 KSH
CATEGORY: Classification
TARIFF NO.: 6209.20.1000, 6209.20.5045

MS. SHERRI DESJARDINS
MENLO WORLDWIDE TRADE SERVICES
P.O. Box 610715
Dallas, TX 75261

RE: Modification of New York Ruling Letter (NY) K81728, dated January 16, 2004; Classification of infants' wear from India.

DEAR MS. DESJARDINS:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) K81728, issued to you on January 16, 2004, on behalf of your client Oshkosh B'Gosh, concerning the classification, in part, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of infants' pullover dresses and coordinating diaper covers. The articles were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses". We have reviewed that ruling and found it to be in error as it pertains to the classification of the infants' pullover dress and coordinating diaper cover. Therefore, this ruling modifies NY K81728.

FACTS:

The garments at issue, identified as style G9151A are comprised of two pieces, each of which is manufactured from gingham fabric of 100% cotton. One of the pieces is a diaper cover, fully elasticized around the waistband. A wide-skirted, sleeveless, pullover dress, styled by narrow shoulder straps, extending from the elasticized, smocked portion of the straight-cut back, which fasten by means of buttons to the bib-front is designed to be worn over the diaper cover.

ISSUE:

Whether the infants' dress sets are classified individually pursuant to Note 13 to Section XI, HTSUSA, as sets pursuant to Additional U.S. Note 1 to Chapter 62, HTSUSA, or as sets under General Rule of Interpretation 3(b) with the dress imparting the essential character.

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. It is Customs and Border Protections' (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 13 to Section XI, HTSUSA, requires textile garments of different headings be separately classified in their own headings even if put up in sets for retail sale unless the context otherwise requires. For purposes of Note 13, the expression "textile garments" means garments of headings 6101 to 6114 and headings 6201 to 6211.

Classification of goods through the six digit (international subdivision) level is accomplished by application of the General Rules of Interpretation (GRI) and relative section and chapter notes. The provisions at issue are as follows:

6209	Babies' garments and clothing accessories
6209.20	Of cotton:
6209.20.1000	Dresses
	Other:
6209.20.50	Other,
	Other:
6209.20.5045	Imported as parts of sets
6209.20.5050	Other

The dress and diaper cover at issue fall under the same subheading, 6209.20, HTSUS, which provides for babies' garments and clothing accessories of cotton.

GRI 6 provides that for legal purposes, 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**. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level. Since GRI 6 uses the phrase "for legal purposes" the preceding GRIs are to be applied at the level necessary for the final legal classification of the goods for tariff purposes.

By application of GRI 6 and following Note 13 to Section XI, HTSUSA, the dress and diaper cover at issue are separately classified because they fall

under different subheadings at the eight digit subheading level. Accordingly, the dress is classifiable under subheading 6209.20.10, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The diaper cover is classifiable under subheading 6209.20.50, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other."

At the statistical level, the diaper cover is potentially classifiable under subheading 6209.20.5045, as imported as parts of sets or subheading 6209.20.5050, HTSUSA, as other. Additional U.S. Note 1 to Chapter 62, HTSUSA, states:

> For the purpose of heading 6209, the term "sets" means two or more different garments of headings 6111, 6209 or 6505 imported together, of corresponding sizes and intended to be worn together by the same person.

As the diaper cover is intended to be worn with the dress as a part of a set, it is classified in subheading 6209.50.5045, HTSUSA.

Our decision is consistent with prior rulings in which CBP determined classification of babies' garment sets was governed by Note 13 to Section XI, HTSUSA, and GRI 6 where the components were classified in different subheadings at the six and eight digit level. In HQ 083685, dated March 2, 1989, CBP addressed the issue of the classification of babies' garment sets containing two or more different garments of different textile compositions. In that ruling, CBP held that by application of Note 13 to Section XI, HTSUSA, the babies' garments at issue therein were classified in their own subheadings even if put up in sets for retail sale. See also, HQ 085298, dated November 13, 1989 and HQ 951883, dated September 18, 1992.

HOLDING:

By application of GRI 1, HTSUSA, the cotton dress and diaper cover are classified in heading 6209, HTSUSA. The dress is specifically provided for in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The general column one rate of duty is 11.8% *ad valorem*. By the same authority and additional US note 1 to Chapter 62, HTSUSA, the diaper cover is provided for in subheading 6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets." The general column one rate of duty is 9.3% *ad valorem*.

Merchandise classified in subheadings 6209.20.1000 and 6209.20.5045, HTSUSA, falls within textile category 239. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web cite at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web cite of the Office of Textiles and Apparel of the Department of Commerce at http://otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:
NY K81728 is hereby modified.

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

[ATTACHMENT Q]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968101
CLA–2 RR:CTF:TCM 968101 KSH
CATEGORY: Classification
TARIFF NO.: 6209.20.1000, 6209.20.5045

FIFI PUDJIJANTO
GAP INC.
345 Spear Street
San Francisco, CA 94105

RE: Modification of New York Ruling Letter (NY) J89770, dated October 28, 2003; Classification of infants' wear from India.

DEAR MS. PUDJIJANTO:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) J89770, issued to you on October 28, 2003, concerning the classification, in part, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of infants' cotton dresses and coordinating diaper covers. The articles were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses". We have reviewed that ruling and found it to be in error as it pertains to the classification of the infants' pullover dress and coordinating diaper cover. Therefore, this ruling modifies NY L81905.

FACTS:

The garments at issue, identified as styles jmp448 and jmp313, are manufactured from woven fabric of 100% cotton, of denim and of printed canvas, respectively, and are comprised of two pieces. One of the pieces is a diaper cover, a panty-like garment, fully elasticized around the waistband and the leg openings. The other of these pieces is a full-length, pullover garment, characterized by A-line styling, by oversized armholes, by a rounded neckline, and by a vertical, zippered opening at the mid-section of the back.

ISSUE:

Whether the infants' dress sets are classified individually pursuant to Note 13 to Section XI, HTSUSA, as sets pursuant to Additional U.S. Note 1 to Chapter 62, HTSUSA, or as sets under General Rule of Interpretation 3(b) with the dress imparting the essential character.

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 de-

termined 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. It is Customs and Border Protections' (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 13 to Section XI, HTSUSA, requires textile garments of different headings be separately classified in their own headings even if put up in sets for retail sale unless the context otherwise requires. For purposes of Note 13, the expression "textile garments" means garments of headings 6101 to 6114 and headings 6201 to 6211.

Classification of goods through the six digit (international subdivision) level is accomplished by application of the General Rules of Interpretation (GRI) and relative section and chapter notes. The provisions at issue are as follows:

6209	Babies' garments and clothing accessories
6209.20	Of cotton:
6209.20.1000	Dresses
	Other:
6209.20.50	Other,
	Other:
6209.20.5045	Imported as parts of sets
6209.20.5050	Other

The dress and diaper cover at issue fall under the same subheading, 6209.20, HTSUS, which provides for babies' garments and clothing accessories of cotton.

GRI 6 provides that for legal purposes, 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**. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level. Since GRI 6 uses the phrase "for legal purposes" the preceding GRIs are to be applied at the level necessary for the final legal classification of the goods for tariff purposes.

By application of GRI 6 and following Note 13 to Section XI, HTSUSA, the dress and diaper cover at issue are separately classified because they fall under different subheadings at the eight digit subheading level. Accordingly, the dress is classifiable under subheading 6209.20.10, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The diaper cover is classifiable under subheading 6209.20.50, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other."

At the statistical level, the diaper cover is potentially classifiable under subheading 6209.20.5045, as imported as parts of sets or subheading 6209.20.5050, HTSUSA, as other. Additional U.S. Note 1 to Chapter 62, HTSUSA, states:

> For the purpose of heading 6209, the term "sets" means two or more different garments of headings 6111, 6209 or 6505 imported together, of corresponding sizes and intended to be worn together by the same person.

As the diaper cover is intended to be worn with the dress as a part of a set, it is classified in subheading 6209.50.5045, HTSUSA.

Our decision is consistent with prior rulings in which CBP determined classification of babies' garment sets was governed by Note 13 to Section XI, HTSUSA, and GRI 6 where the components were classified in different subheadings at the six and eight digit level. In HQ 083685, dated March 2, 1989, CBP addressed the issue of the classification of babies' garment sets containing two or more different garments of different textile compositions. In that ruling, CBP held that by application of Note 13 to Section XI, HTSUSA, the babies' garments at issue therein were classified in their own subheadings even if put up in sets for retail sale. See also, HQ 085298, dated November 13, 1989 and HQ 951883, dated September 18, 1992.

HOLDING:

By application of GRI 1, HTSUSA, the cotton dress and diaper cover are classified in heading 6209, HTSUSA. The dress is specifically provided for in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The general column one rate of duty is 11.8% *ad valorem*. By the same authority and additional US note 1 to Chapter 62, HTSUSA, the diaper cover is provided for in subheading 6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets." The general column one rate of duty is 9.3% *ad valorem*.

Merchandise classified in subheadings 6209.20.1000 and 6209.20.5045, HTSUSA, falls within textile category 239. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web cite at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web cite of the Office of Textiles and Apparel of the Department of Commerce at http://otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

NY J89770 is hereby modified.

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

[ATTACHMENT R]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968102
CLA–2 RR:CTF:TCM 968102 KSH
CATEGORY: Classification
TARIFF NO.: 6209.20.1000, 6209.20.5045

DAVID J. EVAN, ESQ.
GRUNFELD, DESIDERIO, LEBOWITZ,
SILVERMAN & KLESTADT
399 Park Avenue, 25th Floor
New York, NY 10022–4877

RE: Modification of New York Ruling Letter (NY) L81905, dated January 13, 2005; Classification of infants' wear from Indonesia.

DEAR MR. EVAN:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) L81905, issued to you on January 13, 2005, on behalf of your client Ann Taylor, concerning the classification, in part, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of an infant's cotton dress and coordinating diaper cover. The articles were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses". We have reviewed that ruling and found it to be in error as it pertains to the classification of the infant's dress and coordinating diaper cover. Therefore, this ruling modifies NY L81905.

FACTS:

The garments at issue, identified as style 119235, are manufactured from printed woven fabric of 100% cotton. Style 119235 for infants consists of an unlined, sleeveless, scoop-necked, A-line, empire-styled dress, buttoning together at the center of the upper back with a matching diaper cover, elasticized around the waistband and around the leg openings.

ISSUE:

Whether the infant's dress set is classified individually pursuant to Note 13 to Section XI, HTSUSA, as sets pursuant to Additional U.S. Note 1 to Chapter 62, or as a set under General Rule of Interpretation 3(b) with the dress imparting the essential character.

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. It is Customs and Border Protections' (CBP)

practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 13 to Section XI, HTSUSA, requires textile garments of different headings be separately classified in their own headings even if put up in sets for retail sale unless the context otherwise requires. For purposes of Note 13, the expression "textile garments" means garments of headings 6101 to 6114 and headings 6201 to 6211.

Classification of goods through the six digit (international subdivision) level is accomplished by application of the General Rules of Interpretation (GRI) and relative section and chapter notes. The provisions at issue are as follows:

6209	Babies' garments and clothing accessories
6209.20	Of cotton:
6209.20.1000	Dresses
	Other:
6209.20.50	Other,
	Other:
6209.20.5045	Imported as parts of sets
6209.20.5050	Other

The dress and diaper cover at issue fall under the same subheading, 6209.20, HTSUS, which provides for babies' garments and clothing accessories of cotton.

GRI 6 provides that for legal purposes, 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**. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level. Since GRI 6 uses the phrase "for legal purposes" the preceding GRIs are to be applied at the level necessary for the final legal classification of the goods for tariff purposes.

By application of GRI 6 and following Note 13 to Section XI, HTSUSA, the dress and diaper cover at issue are separately classified because they fall under different subheadings at the eight digit subheading level. Accordingly, the dress is classifiable under subheading 6209.20.10, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The diaper cover is classifiable under subheading 6209.20.50, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other."

At the statistical level, the diaper cover is potentially classifiable under subheading 6209.20.5045, as imported as parts of sets or subheading 6209.20.5050, HTSUSA, as other. Additional U.S. Note 1 to Chapter 62, HTSUSA, states:

> For the purpose of heading 6209, the term "sets" means two or more different garments of headings 6111, 6209 or 6505 imported together, of corresponding sizes and intended to be worn together by the same person.

As the diaper cover is intended to be worn with the dress as a part of a set, it is classified in subheading 6209.50.5045, HTSUSA.

Our decision is consistent with prior rulings in which CBP determined classification of babies' garment sets was governed by Note 13 to Section XI, HTSUSA, and GRI 6 where the components were classified in different subheadings at the six and eight digit level. In HQ 083685, dated March 2, 1989, CBP addressed the issue of the classification of babies' garment sets containing two or more different garments of different textile compositions. In that ruling, CBP held that by application of Note 13 to Section XI, HTSUSA, the babies' garments at issue therein were classified in their own subheadings even if put up in sets for retail sale. See also, HQ 085298, dated November 13, 1989 and HQ 951883, dated September 18, 1992.

HOLDING:

By application of GRI 1, HTSUSA, the cotton dress and diaper cover are classified in heading 6209, HTSUSA. The dress is specifically provided for in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The general column one rate of duty is 11.8% *ad valorem*. By the same authority and additional US note 1 to Chapter 62, HTSUSA, the diaper cover is provided for in subheading 6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets." The general column one rate of duty is 9.3% *ad valorem*.

Merchandise classified in subheadings 6209.20.1000 and 6209.20.5045, HTSUSA, falls within textile category 239. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web cite at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web cite of the Office of Textiles and Apparel of the Department of Commerce at http://otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

NY L81905 is hereby modified.

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

[ATTACHMENT S]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968103
CLA–2 RR:CTF:TCM 968103 KSH
CATEGORY: Classification
TARIFF NO.: 6111.20.4000, 6111.20.6030

MARY L. IRISH
TALBOTS
One Talbots Drive
Hingham, MA 02043

RE: Modification of Port Decision Letter (PD) D81590, dated September 8, 1998; Classification of infants' wear from Macau.

DEAR MS. IRISH:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered Port Decision Letter (PD) D81590, issued to you on September 8, 1998, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of an infant's knit dress and coordinating diaper cover. The articles were classified in subheading 6111.20.4000, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Dresses". We have reviewed that ruling and found it to be in error. Therefore, this ruling modifies PD D81590.

FACTS:

The garments at issue, identified as style 91141455, are made from a patterned knit fabric which is 97% cotton and 3% spandex. Style 91141455 consists of a pullover dress and diaper cover. The dress has short sleeves, a scoop front neckline and a full skirt. The sleeves and neck are finished with a band of self fabric capping. The skirt bottom is hemmed. There are 2 patch pockets on the skirt front. The matching diaper cover of this style has an enclosed elastic waistband and leg openings.

ISSUE:

Whether the infants' dress sets are classified individually pursuant to Note 13 to Section XI, HTSUSA, as sets pursuant to Additional U.S. Note 1 to Chapter 61, HTSUSA, or as sets under General Rule of Interpretation 3(b) with the dress imparting the essential character.

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 in-

terpretation of the headings. It is Customs and Border Protections' (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 13 to Section XI, HTSUSA, requires textile garments of different headings be separately classified in their own headings even if put up in sets for retail sale unless the context otherwise requires. For purposes of Note 13, the expression "textile garments" means garments of headings 6101 to 6114 and headings 6201 to 6211.

Classification of goods through the six digit (international subdivision) level is accomplished by application of the General Rules of Interpretation (GRI) and relative section and chapter notes. The provisions at issue are as follows:

6111	Babies' garments and clothing accessories, knitted or crocheted:
6111.20	Of cotton:
6111.20.4000	Dresses
	Other:
6111.20.60	Other,
	Other:
6111.20.6030	Imported as parts of sets
6111.20.6070	Other

The dress and diaper cover at issue fall under the same subheading, 6111.20, HTSUS, which provides for babies' garments and clothing accessories, knitted or crocheted of cotton.

GRI 6 provides that for legal purposes, 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**. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level. Since GRI 6 uses the phrase "for legal purposes" the preceding GRIs are to be applied at the level necessary for the final legal classification of the goods for tariff purposes.

By application of GRI 6 and following Note 13 to Section XI, HTSUSA, the dress and diaper cover at issue are separately classified because they fall under different subheadings at the eight digit subheading level. Accordingly, the dress is classifiable under subheading 6111.20.40, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Dresses." The diaper cover is classifiable under subheading 611.20.60, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Other: Other."

At the statistical level, the diaper cover is potentially classifiable under subheading 6111.20.6030, as imported as parts of sets or subheading 6111.20.6070, HTSUSA, as other. Additional U.S. Note 1 to Chapter 61, HTSUSA, states:

> For the purpose of heading 6111, the term "sets" means two or more different garments of headings 6111, 6209 or 6505 imported together, of

corresponding sizes and intended to be worn together by the same person.

As the diaper cover is intended to be worn with the dress as a part of a set, it is classified in subheading 6111.20.6030, HTSUSA.

Our decision is consistent with prior rulings in which CBP determined classification of babies' garment sets was governed by Note 13 to Section XI, HTSUSA, and GRI 6 where the components were classified in different subheadings at the six and eight digit level. In HQ 083685, dated March 2, 1989, CBP addressed the issue of the classification of babies' garment sets containing two or more different garments of different textile compositions. In that ruling, CBP held that by application of Note 13 to Section XI, HTSUSA, the babies' garments at issue therein were classified in their own subheadings even if put up in sets for retail sale. See also, HQ 085298, dated November 13, 1989 and HQ 951883, dated September 18, 1992.

HOLDING:

By application of GRI 1, HTSUSA, the cotton dress and diaper cover are classified in heading 6111, HTSUSA. The dress is specifically provided for in subheading 6111.20.4000, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Dresses." The general column one rate of duty is 11.5% *ad valorem*. By the same authority and additional US note 1 to Chapter 61, HTSUSA, the diaper cover is provided for in subheading 6111.20.6030, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Other: Other, Other: Imported as parts of sets." The general column one rate of duty is 8.1% *ad valorem*.

Merchandise classified in subheadings 6111.20.4000 and 6111.20.6030, HTSUSA, falls within textile category 239. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web cite at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web cite of the Office of Textiles and Apparel of the Department of Commerce at http://otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

PD D81590 is hereby modified.

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

[ATTACHMENT T]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968104
CLA–2 RR:CTF:TCM 968104 KSH
CATEGORY: Classification
TARIFF NO.: 6209.20.1000, 6209.20.5045

LUDENE MURPHREE
GAP INC.
345 Spear Street
San Francisco, CA 94105

RE: Modification of Port Decision Letter (PD) D81720, dated September 18, 1998; Classification of infants' wear from China.

DEAR MS. MURPHREE:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered Port Decision Letter (PD) D81720, issued to you on September 18, 1998, concerning the classification, in part, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of an infant's cotton woven sundress and coordinating diaper cover. The articles were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses". We have reviewed that ruling and found it to be in error as it pertains to the classification of the infants' sundress and coordinating diaper cover. Therefore, this ruling modifies PD D81720.

FACTS:

The garments at issue, identified as Style 477386, are made from a woven printed pique fabric which is 100% cotton. The style consists of two garments. The first is a sleeveless sundress with a partial back opening secured by 4 plastic buttons. This garment has a bib top in both the front and back, a square neckline in both the front and back and narrow shoulder straps. The gathered skirt portion is hemmed. The second garment is a diaper cover of identical fabric. The diaper cover has an elasticized waist and leg openings.

ISSUE:

Whether the infants' dress sets are classified individually pursuant to Note 13 to Section XI, HTSUSA, as sets pursuant to Additional U.S. Note 1 to Chapter 62, HTSUSA, or as sets under General Rule of Interpretation 3(b) with the dress imparting the essential character.

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. It is Customs and Border Protections' (CBP)

practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 13 to Section XI, HTSUSA, requires textile garments of different headings be separately classified in their own headings even if put up in sets for retail sale unless the context otherwise requires. For purposes of Note 13, the expression "textile garments" means garments of headings 6101 to 6114 and headings 6201 to 6211.

Classification of goods through the six digit (international subdivision) level is accomplished by application of the General Rules of Interpretation (GRI) and relative section and chapter notes. The provisions at issue are as follows:

6209	Babies' garments and clothing accessories
6209.20	Of cotton:
6209.20.1000	Dresses
	Other:
6209.20.50	Other,
	Other:
6209.20.5045	Imported as parts of sets
6209.20.5050	Other

The dress and diaper cover at issue fall under the same subheading, 6209.20, HTSUS, which provides for babies' garments and clothing accessories of cotton.

GRI 6 provides that for legal purposes, 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**. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level. Since GRI 6 uses the phrase "for legal purposes" the preceding GRIs are to be applied at the level necessary for the final legal classification of the goods for tariff purposes.

By application of GRI 6 and following Note 13 to Section XI, HTSUSA, the dress and diaper cover at issue are separately classified because they fall under different subheadings at the eight digit subheading level. Accordingly, the dress is classifiable under subheading 6209.20.10, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The diaper cover is classifiable under subheading 6209.20.50, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other."

At the statistical level, the diaper cover is potentially classifiable under subheading 6209.20.5045, as imported as parts of sets or subheading 6209.20.5050, HTSUSA, as other. Additional U.S. Note 1 to Chapter 62, HTSUSA, states:

> For the purpose of heading 6209, the term "sets" means two or more different garments of headings 6111, 6209 or 6505 imported together, of corresponding sizes and intended to be worn together by the same person.

As the diaper cover is intended to be worn with the dress as a part of a set, it is classified in subheading 6209.50.5045, HTSUSA.

Our decision is consistent with prior rulings in which CBP determined classification of babies' garment sets was governed by Note 13 to Section XI, HTSUSA, and GRI 6 where the components were classified in different subheadings at the six and eight digit level. In HQ 083685, dated March 2, 1989, CBP addressed the issue of the classification of babies' garment sets containing two or more different garments of different textile compositions. In that ruling, CBP held that by application of Note 13 to Section XI, HTSUSA, the babies' garments at issue therein were classified in their own subheadings even if put up in sets for retail sale. See also, HQ 085298, dated November 13, 1989 and HQ 951883, dated September 18, 1992.

HOLDING:

By application of GRI 1, HTSUSA, the cotton dress and diaper cover are classified in heading 6209, HTSUSA. The dress is specifically provided for in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The general column one rate of duty is 11.8% *ad valorem*. By the same authority and additional US note 1 to Chapter 62, HTSUSA, the diaper cover is provided for in subheading 6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets." The general column one rate of duty is 9.3% *ad valorem*.

Merchandise classified in subheadings 6209.20.1000 and 6209.20.5045, HTSUSA, falls within textile category 239. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web cite at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web cite of the Office of Textiles and Apparel of the Department of Commerce at http://otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

PD D81720 is hereby modified.

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

[ATTACHMENT U]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968105
CLA–2 RR:CTF:TCM 968105 KSH
CATEGORY: Classification
TARIFF NO.: 6111.20.4000, 6111.20.6030

KAREN RIGGS
TALBOTS
One Talbots Drive
Hingham, MA 02043

RE: Revocation of New York Ruling Letter (NY) J83409, dated April 25, 2003; Classification of infants' wear from China.

DEAR MS. RIGGS:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) J83409, issued to you on April 25, 2003, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of an infant's knit dress and coordinating diaper cover. The articles were classified in subheading 6111.20.4000, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Dresses". We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes NY J83409.

FACTS:

The garments at issue, identified as style 35587006, are comprised of two coordinating pieces. One of the pieces, manufactured from finely knitted fabric of 100% cotton, is a diaper cover, fully elasticized around the waistband and around the leg openings, which will be worn under the other piece comprising this style. The other piece of style 35587006 is a dress, the long sleeves and bodice of which are manufactured from knitted, low-gauge fabric of 100% cotton, and the skirt portion of which is manufactured from finely knitted fabric of 100% cotton. The skirt portion is overlaid by sheer mesh fabric of 100% polyester.

ISSUE:

Whether the infants' dress sets are classified individually pursuant to Note 13 to Section XI, HTSUSA, as sets pursuant to Additional U.S. Note 1 to Chapter 61, HTSUSA, or as sets under General Rule of Interpretation 3(b) with the dress imparting the essential character.

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 in-

terpretation of the headings. It is Customs and Border Protections' (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 13 to Section XI, HTSUSA, requires textile garments of different headings be separately classified in their own headings even if put up in sets for retail sale unless the context otherwise requires. For purposes of Note 13, the expression "textile garments" means garments of headings 6101 to 6114 and headings 6201 to 6211.

Classification of goods through the six digit (international subdivision) level is accomplished by application of the General Rules of Interpretation (GRI) and relative section and chapter notes. The provisions at issue are as follows:

6111	Babies' garments and clothing accessories, knitted or crocheted:
6111.20	Of cotton:
6111.20.4000	Dresses
	Other:
6111.20.60	Other,
	Other:
6111.20.6030	Imported as parts of sets
6111.20.6070	Other

The dress and diaper cover at issue fall under the same subheading, 6111.20, HTSUS, which provides for babies' garments and clothing accessories, knitted or crocheted of cotton.

GRI 6 provides that for legal purposes, 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.** GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level. Since GRI 6 uses the phrase "for legal purposes" the preceding GRIs are to be applied at the level necessary for the final legal classification of the goods for tariff purposes.

By application of GRI 6 and following Note 13 to Section XI, HTSUSA, the dress and diaper cover at issue are separately classified because they fall under different subheadings at the eight digit subheading level. Accordingly, the dress is classifiable under subheading 6111.20.40, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Dresses." The diaper cover is classifiable under subheading 611.20.60, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Other: Other."

At the statistical level, the diaper cover is potentially classifiable under subheading 6111.20.6030, as imported as parts of sets or subheading 6111.20.6070, HTSUSA, as other. Additional U.S. Note 1 to Chapter 61, HTSUSA, states:

> For the purpose of heading 6111, the term "sets" means two or more different garments of headings 6111, 6209 or 6505 imported together, of

corresponding sizes and intended to be worn together by the same person.

As the diaper cover is intended to be worn with the dress as a part of a set, it is classified in subheading 6111.20.6030, HTSUSA.

Our decision is consistent with prior rulings in which CBP determined classification of babies' garment sets was governed by Note 13 to Section XI, HTSUSA, and GRI 6 where the components were classified in different subheadings at the six and eight digit level. In HQ 083685, dated March 2, 1989, CBP addressed the issue of the classification of babies' garment sets containing two or more different garments of different textile compositions. In that ruling, CBP held that by application of Note 13 to Section XI, HTSUSA, the babies' garments at issue therein were classified in their own subheadings even if put up in sets for retail sale. See also, HQ 085298, dated November 13, 1989 and HQ 951883, dated September 18, 1992.

HOLDING:

By application of GRI 1, HTSUSA, the cotton dress and diaper cover are classified in heading 6111, HTSUSA. The dress is specifically provided for in subheading 6111.20.4000, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Dresses." The general column one rate of duty is 11.5% *ad valorem*. By the same authority and additional US note 1 to Chapter 61, HTSUSA, the diaper cover is provided for in subheading 6111.20.6030, HTSUSA, which provides for "Babies' garments and clothing accessories, knitted or crocheted: Of cotton: Other: Other, Other: Imported as parts of sets." The general column one rate of duty is 8.1% *ad valorem*.

Merchandise classified in subheadings 6111.20.4000 and 6111.20.6030, HTSUSA, falls within textile category 239. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web cite at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web cite of the Office of Textiles and Apparel of the Department of Commerce at http://otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

NY J83409 is hereby revoked.

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

[ATTACHMENT V]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968106
CLA–2 RR:CTF:TCM 968106 KSH
CATEGORY: Classification
TARIFF NO.: 6209.20.1000, 6209.20.5045

LUDENE MURPHREE
IMPORT COMPLIANCE MANAGER
GAP INC.
345 Spear Street
San Francisco, CA 94105

RE: Revocation of Port Decision Letter (PD) E87307, dated October 12, 1999; Classification of infants' wear from Sri Lanka.

DEAR MS. MURPHREE:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered Port Decision Letter (PD) E87307, issued to you on October 12, 1999, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of an infant's cotton dress and coordinating diaper cover. The articles were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses". We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes PD E87307.

FACTS:

The garment at issue, identified as Style 196351, is made from a lightweight woven fabric that is 100% cotton denim. This style is a sleeveless dress with a partial back opening secured by 3 metal snaps, a slightly scoop neckline in the front and a round neckline in the back. The skirt portion is gathered. The neckline and armholes are finished with capping; the bottom is hemmed. A pull-on diaper cover will be imported with this dress. The diaper cover, made from the same fabric, has elasticized leg openings and a covered elastic waistband. Style 196351 will be imported in baby sizes 0–3 and 6–12 months.

ISSUE:

Whether the infants' dress sets are classified individually pursuant to Note 13 to Section XI, HTSUSA, as sets pursuant to Additional U.S. Note 1 to Chapter 62, HTSUSA, or as sets under General Rule of Interpretation 3(b) with the dress imparting the essential character.

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 in-

terpretation of the headings. It is Customs and Border Protections' (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 13 to Section XI, HTSUSA, requires textile garments of different headings be separately classified in their own headings even if put up in sets for retail sale unless the context otherwise requires. For purposes of Note 13, the expression "textile garments" means garments of headings 6101 to 6114 and headings 6201 to 6211.

Classification of goods through the six digit (international subdivision) level is accomplished by application of the General Rules of Interpretation (GRI) and relative section and chapter notes. The provisions at issue are as follows:

6209	Babies' garments and clothing accessories
6209.20	Of cotton:
6209.20.1000	Dresses
	Other:
6209.20.50	Other,
	Other:
6209.20.5045	Imported as parts of sets
6209.20.5050	Other

The dress and diaper cover at issue fall under the same subheading, 6209.20, HTSUS, which provides for babies' garments and clothing accessories of cotton.

GRI 6 provides that for legal purposes, 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**. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level. Since GRI 6 uses the phrase "for legal purposes" the preceding GRIs are to be applied at the level necessary for the final legal classification of the goods for tariff purposes.

By application of GRI 6 and following Note 13 to Section XI, HTSUSA, the dress and diaper cover at issue are separately classified because they fall under different subheadings at the eight digit subheading level. Accordingly, the dress is classifiable under subheading 6209.20.10, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The diaper cover is classifiable under subheading 6209.20.50, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other."

At the statistical level, the diaper cover is potentially classifiable under subheading 6209.20.5045, as imported as parts of sets or subheading 6209.20.5050, HTSUSA, as other. Additional U.S. Note 1 to Chapter 62, HTSUSA, states:

> For the purpose of heading 6209, the term "sets" means two or more different garments of headings 6111, 6209 or 6505 imported together, of

corresponding sizes and intended to be worn together by the same person.

As the diaper cover is intended to be worn with the dress as a part of a set, it is classified in subheading 6209.50.5045, HTSUSA.

Our decision is consistent with prior rulings in which CBP determined classification of babies' garment sets was governed by Note 13 to Section XI, HTSUSA, and GRI 6 where the components were classified in different subheadings at the six and eight digit level. In HQ 083685, dated March 2, 1989, CBP addressed the issue of the classification of babies' garment sets containing two or more different garments of different textile compositions. In that ruling, CBP held that by application of Note 13 to Section XI, HTSUSA, the babies' garments at issue therein were classified in their own subheadings even if put up in sets for retail sale. See also, HQ 085298, dated November 13, 1989 and HQ 951883, dated September 18, 1992.

HOLDING:

By application of GRI 1, HTSUSA, the cotton dress and diaper cover are classified in heading 6209, HTSUSA. The dress is specifically provided for in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The general column one rate of duty is 11.8% *ad valorem*. By the same authority and additional US note 1 to Chapter 62, HTSUSA, the diaper cover is provided for in subheading 6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets." The general column one rate of duty is 9.3% *ad valorem*.

Merchandise classified in subheadings 6209.20.1000 and 6209.20.5045, HTSUSA, falls within textile category 239. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web cite at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web cite of the Office of Textiles and Apparel of the Department of Commerce at http://otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

PD E87307 is hereby revoked.

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

[ATTACHMENT W]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968107
CLA–2 RR:CTF:TCM 968107 KSH
CATEGORY: Classification
TARIFF NO.: 6209.20.1000, 6209.20.5045

TERESA A. RAFFA
ASSOCIATED MERCHANDISING CORPORATION
1440 Broadway
New York, NY 10018

RE: Revocation of Port Decision Letter (PD) E87250, dated October 8, 1999; Classification of infants' wear from India.

DEAR MS. RAFFA:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered Port Decision Letter (PD) E87250, issued to you on October 8, 1999, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of infants' cotton dress and coordinating diaper cover. The articles were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses". We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes PD E87250.

FACTS:

The garment at issue, identified as style S01–3602, is an infant's dress and diaper cover made of 100 percent cotton twill fabric. The sleeveless dress features a Peter Pan collar, a full frontal opening with a six-button closure, a gathered skirt sewn to the bodice, two patch pockets below the waist, and a hemmed bottom. The collar, armholes, and pockets are finished with rickrack trim. The matching diaper cover has an elasticized waist and gathered leg openings with a straight band in the front and an elasticized band in back. The leg openings are finished with rickrack trim. The garment will be imported in infants' sizes 12 to 24 months.

ISSUE:

Whether the infants' dress sets are classified individually pursuant to Note 13 to Section XI, HTSUSA, as sets pursuant to Additional U.S. Note 1 to Chapter 62, HTSUSA, or as sets under General Rule of Interpretation 3(b) with the dress imparting the essential character.

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. It is Customs and Border Protections' (CBP)

practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 13 to Section XI, HTSUSA, requires textile garments of different headings be separately classified in their own headings even if put up in sets for retail sale unless the context otherwise requires. For purposes of Note 13, the expression "textile garments" means garments of headings 6101 to 6114 and headings 6201 to 6211.

Classification of goods through the six digit (international subdivision) level is accomplished by application of the General Rules of Interpretation (GRI) and relative section and chapter notes. The provisions at issue are as follows:

6209	Babies' garments and clothing accessories
6209.20	Of cotton:
6209.20.1000	Dresses
	Other:
6209.20.50	Other,
	Other:
6209.20.5045	Imported as parts of sets
6209.20.5050	Other

The dress and diaper cover at issue fall under the same subheading, 6209.20, HTSUS, which provides for babies' garments and clothing accessories of cotton.

GRI 6 provides that for legal purposes, 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**. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level. Since GRI 6 uses the phrase "for legal purposes" the preceding GRIs are to be applied at the level necessary for the final legal classification of the goods for tariff purposes.

By application of GRI 6 and following Note 13 to Section XI, HTSUSA, the dress and diaper cover at issue are separately classified because they fall under different subheadings at the eight digit subheading level. Accordingly, the dress is classifiable under subheading 6209.20.10, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The diaper cover is classifiable under subheading 6209.20.50, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other."

At the statistical level, the diaper cover is potentially classifiable under subheading 6209.20.5045, as imported as parts of sets or subheading 6209.20.5050, HTSUSA, as other. Additional U.S. Note 1 to Chapter 62, HTSUSA, states:

> For the purpose of heading 6209, the term "sets" means two or more different garments of headings 6111, 6209 or 6505 imported together, of corresponding sizes and intended to be worn together by the same person.

As the diaper cover is intended to be worn with the dress as a part of a set, it is classified in subheading 6209.50.5045, HTSUSA.

Our decision is consistent with prior rulings in which CBP determined classification of babies' garment sets was governed by Note 13 to Section XI, HTSUSA, and GRI 6 where the components were classified in different subheadings at the six and eight digit level. In HQ 083685, dated March 2, 1989, CBP addressed the issue of the classification of babies' garment sets containing two or more different garments of different textile compositions. In that ruling, CBP held that by application of Note 13 to Section XI, HTSUSA, the babies' garments at issue therein were classified in their own subheadings even if put up in sets for retail sale. See also, HQ 085298, dated November 13, 1989 and HQ 951883, dated September 18, 1992.

HOLDING:

By application of GRI 1, HTSUSA, the cotton dress and diaper cover are classified in heading 6209, HTSUSA. The dress is specifically provided for in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The general column one rate of duty is 11.8% *ad valorem*. By the same authority and additional US note 1 to Chapter 62, HTSUSA, the diaper cover is provided for in subheading 6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets." The general column one rate of duty is 9.3% *ad valorem*.

Merchandise classified in subheadings 6209.20.1000 and 6209.20.5045, HTSUSA, falls within textile category 239. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web cite at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web cite of the Office of Textiles and Apparel of the Department of Commerce at http://otexa.ita.doc.gov.

EFFECT IN OTHER RULINGS:

PD E87250 is hereby revoked.

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

[ATTACHMENT X]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 968108
CLA–2 RR:CTF:TCM 968108 KSH
CATEGORY: Classification
TARIFF NO.: 6209.20.1000, 6209.20.5045

MS. PATTI CORDO
AMERICAN CARGO EXPRESS, INC.
435 Division Street
Elizabeth, NJ 07201

RE: Revocation of New York Ruling Letter (NY) L86100, dated July 13, 2005; Classification of infants' wear from China.

DEAR MS. CORDO:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) L86100, issued to you on July 13, 2005, on behalf of your client CWF USA, Inc., concerning the classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of an infant's cotton dress and coordinating diaper cover. The articles were classified in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses". We have reviewed that ruling and found it to be in error as it pertains to the classification of the infant's dress and coordinating diaper cover. Therefore, this ruling revokes NY L86100.

FACTS:

The garments at issue, identified as style K170, consist of a loose-fitted, empire styled, short-sleeved dress, manufactured from a bodice of knitted velour of 100% polyester and from a woven twill skirt of 100% cotton, and a diaper cover from the same velour fabric.

ISSUE:

Whether the infant's dress set is classified individually pursuant to Note 13 to Section XI, HTSUSA, as sets pursuant to Additional U.S. Note 1 to Chapter 62, HTSUSA, or as a set under General Rule of Interpretation 3(b) with the dress imparting the essential character.

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. It is Customs and Border Protections' (CBP) practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUSA. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Note 13 to Section XI, HTSUSA, requires textile garments of different headings be separately classified in their own headings even if put up in sets for retail sale unless the context otherwise requires. For purposes of Note 13, the expression "textile garments" means garments of headings 6101 to 6114 and headings 6201 to 6211.

Classification of goods through the six digit (international subdivision) level is accomplished by application of the General Rules of Interpretation (GRI) and relative section and chapter notes. The provisions at issue are as follows:

6209	Babies' garments and clothing accessories
6209.20	Of cotton:
6209.20.1000	Dresses
	Other:
6209.20.50	Other,
	Other:
6209.20.5045	Imported as parts of sets
6209.20.5050	Other

The dress and diaper cover at issue fall under the same subheading, 6209.20, HTSUS, which provides for babies' garments and clothing accessories of cotton.

GRI 6 provides that for legal purposes, 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**. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level. Since GRI 6 uses the phrase "for legal purposes" the preceding GRIs are to be applied at the level necessary for the final legal classification of the goods for tariff purposes.

By application of GRI 6 and following Note 13 to Section XI, HTSUSA, the dress and diaper cover at issue are separately classified because they fall under different subheadings at the eight digit subheading level. Accordingly, the dress is classifiable under subheading 6209.20.10, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The diaper cover is classifiable under subheading 6209.20.50, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other."

At the statistical level, the diaper cover is potentially classifiable under subheading 6209.20.5045, as imported as parts of sets or subheading 6209.20.5050, HTSUSA, as other. Additional U.S. Note 1 to Chapter 62, HTSUSA, states:

> For the purpose of heading 6209, the term "sets means two or more different garments of headings 6111, 6209 or 6505 imported together, of corresponding sizes and intended to be worn together by the same person.

As the diaper cover is intended to be worn with the dress as a part of a set, it is classified in subheading 6209.50.5045, HTSUSA.

Our decision is consistent with prior rulings in which CBP determined classification of babies' garment sets was governed by Note 13 to Section XI, HTSUSA, and GRI 6 where the components were classified in different subheadings at the six and eight digit level. In HQ 083685, dated March 2, 1989, CBP addressed the issue of the classification of babies' garment sets containing two or more different garments of different textile compositions. In that ruling, CBP held that by application of Note 13 to Section XI, HTSUSA, the babies' garments at issue therein were classified in their own subheadings even if put up in sets for retail sale. See also, HQ 085298, dated November 13, 1989 and HQ 951883, dated September 18, 1992.

HOLDING:

By application of GRI 1, HTSUSA, the cotton dress and diaper cover are classified in heading 6209, HTSUSA. The dress is specifically provided for in subheading 6209.20.1000, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Dresses." The general column one rate of duty is 11.8% *ad valorem*. By the same authority and additional US note 1 to Chapter 62, HTSUSA, the diaper cover is provided for in subheading 6209.20.5045, HTSUSA, which provides for "Babies' garments and clothing accessories: Of cotton: Other: Other, Other: Imported as parts of sets." The general column one rate of duty is 9.3% *ad valorem*.

Merchandise classified in subheadings 6209.20.1000 and 6209.20.5045, HTSUSA, falls within textile category 239. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member-countries. Quota and visa requirements are the result of international agreements that are subject to frequent negotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the "Textile Status Report for Absolute Quotas," which is available on our web cite at www.cbp.gov. For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web cite of the Office of Textiles and Apparel of the Department of Commerce at http://otexa.ita.doc.gov.

EFFECT ON OTHER RULINGS:

NY L86100 is hereby revoked.

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