

U.S. Customs and Border Protection

CBP Decisions

RE-ACCREDITATION AND RE-APPROVAL OF KING INSPECTION AND TESTING, INC., AS A COMMERCIAL GAUGER AND LABORATORY

[CBP Dec. 07-92]

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

ACTION: Notice of re-approval of King Inspection and Testing, Inc., of Carson, California, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 151.13, King Inspection and Testing, Inc., 1300 E. 223rd Street, #401, Carson, California 90745, has been re-approved to gauge petroleum and petroleum products, organic chemicals and vegetable oils, and to test petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 151.13. Anyone wishing to employ this entity to conduct laboratory analysis or gauger services should request and receive written assurances from the entity that it is accredited or approved by the U. S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific tests or gauger services this entity is accredited or approved to perform may be directed to the U. S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml.

DATES: The re-approval of King Inspection and Testing, Inc., as a commercial gauger and laboratory became effective on September 15, 2006. The next triennial inspection date will be scheduled for September 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc, Ph.D, or Randall Breaux, Laboratories and Scientific Services, U.S.

Customs and Border Protection, 1300 Pennsylvania Avenue, NW,
Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 6, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, December 17, 2007 (72 FR 71422)]

**RE-ACCREDITATION AND RE-APPROVAL OF
INSPECTORATE AMERICA CORP., AS A COMMERCIAL
GAUGER AND LABORATORY**

[CBP Dec. 07-93]

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

ACTION: Notice of re-approval of Inspectorate America Corp., of
Bellingham, Washington, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR
151.12 and 151.13, Inspectorate America Corp., 4041 Home Road,
Suite A, Bellingham, Washington 98226, has been re-approved to
gauge petroleum and petroleum products, organic chemicals and
vegetable oils, and to test petroleum and petroleum products for cus-
toms purposes, in accordance with the provisions of 19 CFR 151.12
and 151.13. Anyone wishing to employ this entity to conduct labora-
tory analysis or gauger services should request and receive written
assurances from the entity that it is accredited or approved by the U.
S. Customs and Border Protection to conduct the specific test or
gauger service requested. Alternatively, inquiries regarding the spe-
cific tests or gauger services this entity is accredited or approved to
perform may be directed to the U. S. Customs and Border Protection
by calling (202) 344-1060. The inquiry may also be sent to [http://
www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/
org_and_operations.xml](http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml).

DATES: The re-approval of Inspectorate America Corp., as a com-
mercial gauger and laboratory became effective on March 14, 2007.
The next triennial inspection date will be scheduled for March 2010.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc,
Ph.D, or Randall Breaux, Laboratories and Scientific Services, U.S.

Customs and Border Protection, 1300 Pennsylvania Avenue, NW,
Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 6, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, December 17, 2007 (72 FR 71422)]

**RE-ACCREDITATION AND RE-APPROVAL OF PAN PACIFIC
SURVEYORS, INC., AS A COMMERCIAL GAUGER AND
LABORATORY**

[CBP Dec. 07-94]

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

ACTION: Notice of re-approval of Pan Pacific Surveyors, Inc., of
Wilmington, California, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR
151.12 and 151.13, Pan Pacific Surveyors, Inc., 444 Quay Ave., Suite
#7, Wilmington, California 90744, has been re-approved to gauge pe-
troleum and petroleum products, organic chemicals and vegetable
oils, and to test petroleum and petroleum products for customs pur-
poses, in accordance with the provisions of 19 CFR 151.12 and
151.13. Anyone wishing to employ this entity to conduct laboratory
analysis or gauger services should request and receive written assur-
ances from the entity that it is accredited or approved by the U. S.
Customs and Border Protection to conduct the specific test or gauger
service requested. Alternatively, inquiries regarding the specific
tests or gauger services this entity is accredited or approved to per-
form may be directed to the U. S. Customs and Border Protection by
calling (202) 344-1060. The inquiry may also be sent to [http://
www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/
org_and_operations.xml](http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml).

DATES: The re-approval of Pan Pacific Surveyors, Inc., as a com-
mercial gauger and laboratory became effective on September 13,
2006. The next triennial inspection date will be scheduled for Sep-
tember 2009.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc,
Ph.D, or Randall Breaux, Laboratories and Scientific Services, U.S.

Customs and Border Protection, 1300 Pennsylvania Avenue, NW,
Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 6, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, December 17, 2007 (72 FR 71421)]

**RE-ACCREDITATION AND RE-APPROVAL OF
INSPECTORATE AMERICA CORP., AS A COMMERCIAL
GAUGER AND LABORATORY**

[CBP Dec. 07-95]

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

ACTION: Notice of re-approval of Inspectorate America Corp., of
Martinez, California, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR
151.12 and 151.13, Inspectorate America Corp., 3773 Pacheco Blvd.,
Suite C, Martinez, California 94553, has been re-approved to gauge
petroleum and petroleum products, organic chemicals and vegetable
oils, and to test petroleum and petroleum products for customs pur-
poses, in accordance with the provisions of 19 CFR 151.12 and
151.13. Anyone wishing to employ this entity to conduct laboratory
analysis or gauger services should request and receive written assur-
ances from the entity that it is accredited or approved by the U. S.
Customs and Border Protection to conduct the specific test or gauger
service requested. Alternatively, inquiries regarding the specific
tests or gauger services this entity is accredited or approved to per-
form may be directed to the U. S. Customs and Border Protection by
calling (202) 344-1060. The inquiry may also be sent to [http://
www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/
org_and_operations.xml](http://www.cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/org_and_operations.xml).

DATES: The re-approval of Inspectorate America Corp., as a com-
mercial gauger and laboratory became effective on March 6, 2007.
The next triennial inspection date will be scheduled for March 2010.

FOR FURTHER INFORMATION CONTACT: Eugene J. Bondoc,
Ph.D, or Randall Breaux, Laboratories and Scientific Services, U.S.

Customs and Border Protection, 1300 Pennsylvania Avenue, NW,
Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 7, 2007

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, December 21, 2007 (72 FR 72745)]



General Notices

Oral Declarations No Longer Satisfactory as Evidence of Citizenship and Identity

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

ACTION: Notice.

SUMMARY: U.S., Canadian and Bermudian citizens entering the
United States at land or sea ports-of-entry must establish their iden-
tity and citizenship to the satisfaction of a U.S. Customs and Border
Protection (CBP) Officer. Under current CBP procedures, such indi-
viduals may provide any proof of identity and citizenship. While
most individuals provide documentary evidence of citizenship, such
as a passport or birth certificate, individuals may, depending on the
circumstances, be admitted on an oral declaration. Accordingly, CBP
is amending its field guidance procedures to instruct CBP officers
that citizenship ordinarily may not be established using only an oral
declaration.

This Notice informs the public that, effective January 31, 2008, all
travelers will be expected to present documents proving citizenship,
such as a birth certificate, and government-issued documents prov-
ing identity, such as a driver's license, when entering the United
States through land and sea ports of entry.

DATES: This notice is effective January 31, 2008.

FOR FURTHER INFORMATION CONTACT: Colleen Manaher,
WHTI, Office of Field Operations, U.S. Customs and Border Protec-
tion, 1300 Pennsylvania Avenue, NW, Room 5.4-D, Washington, DC
20229, telephone number (202) 344-3003.

SUPPLEMENTARY INFORMATION

All travelers entering the United States are inspected by a Cus-
toms and Border Protection (CBP) Officer. To enter the United

States in conformance with the Immigration and Nationality Act (INA), U.S. citizens, Canadians and Bermudians must satisfy the CBP Officer of their identity and citizenship. See 8 CFR 235.1(b) and 235.1(f)(1).

In accordance with current CBP operational procedures, a CBP Officer may accept documentary evidence of citizenship from U.S. citizens arriving at land or sea ports of entry from within the Western Hemisphere, such as a passport or birth certificate, or may accept an oral declaration if, depending upon the circumstances presented, such a declaration is deemed sufficient to prove citizenship. When assessing an assertion of citizenship, the CBP Officer may ask for additional identification and proof of citizenship until the CBP Officer is satisfied that the traveler seeking entry into the United States is a U.S. citizen.

Similarly, certain nonimmigrant aliens who are citizens of Canada and Bermuda are exempt from presenting a passport when entering the United States as nonimmigrant visitors from countries in the Western Hemisphere at land or sea ports-of-entry. 8 CFR 212.1(a)(1) and (2). Like U.S. citizens, these travelers are required to satisfy the inspecting CBP officer of their identities and citizenship at the time of their applications for admission. 8 CFR 235.1(f)(1). In accordance with current CBP operational procedures, a CBP Officer may accept documentary evidence of citizenship from Canadian and Bermudian citizens arriving from within the Western Hemisphere, such as a passport or birth certificate, or may, depending upon the circumstances presented, accept an oral declaration.

CBP is now amending its field instructions to direct CBP Officers to no longer generally accept oral declarations as sufficient proof of citizenship and, instead, require documents that evidence identity and citizenship from U.S., Canadian, and Bermudian citizens entering the United States at land and sea ports-of-entry.

Upon implementation, these changes in procedure will reduce the potential vulnerability posed by those who might falsely purport to be U.S., Canadian or Bermudian citizens trying to enter the United States by land or sea in reliance upon a mere oral declaration. Beginning on January 31, 2008, a person claiming U.S., Canadian, or Bermudian citizenship must establish that fact to the examining CBP Officer's satisfaction by presenting a citizenship document such as a birth certificate as well as a government-issued photo identification document. CBP retains its authority to request additional documentation when warranted and to make appropriate individual exceptions.

The instruction for CBP Officers to no longer generally accept oral declarations alone as satisfactory evidence of citizenship is a change in DHS and CBP internal operating procedures, and therefore is exempt from notice and comment rulemaking requirements under the Administrative Procedure Act, 5 U.S.C. 553(b).

On June 26, 2007, the Department of Homeland Security (DHS) and Department of State (DOS) published a joint notice of proposed rulemaking to implement the final phase of the Western Hemisphere Travel Initiative (WHTI) and require persons entering the United States from Western Hemisphere countries to present a passport or other travel document as determined by the Secretary of Homeland Security. See 72 FR 35088. In the NPRM, DHS also explained that, separate from WHTI, beginning January 31, 2008, CBP would no longer accept oral declarations alone as proof of citizenship or identity at land and sea border ports-of-entry.

DHS received five comments in response to the NRPM discussion on the change of practice concerning oral declarations. Although, as discussed above, the amendment to CBP procedures does not require notice and comment rulemaking, DHS will address those comments in the WHTI final rule. In summary, those comments were concerned about increased traffic and resulting travel delays at land border ports-of-entry stemming from document requirements. CBP will rely on its operational experience in processing travelers entering the United States by land to ensure that these changes are implemented in a manner that will minimize delays while achieving the security benefit underlying WHTI.

Accordingly, effective January 31, 2008, CBP Officers will no longer generally allow travelers claiming to be U.S., Canadian, or Bermudian citizens to establish citizenship by relying only on an oral declaration. Beginning on that date, all travelers, including those claiming to be U.S., Canadian, or Bermudian citizens arriving by land and sea will generally be expected to present some form of documentation to satisfy the CBP Officer of his or her identity and citizenship. For example, such documentation may include a government-issued photo identification document presented with a citizenship document, such as a birth certificate.

Date: December 14, 2007

JAYSON P. AHERN,
*Acting Commissioner,
Customs and Border Protection.*

[Published in the Federal Register, December 21, 2007 (72 FR 72744)]

CUSTOMS BROKERS USER FEE PAYMENT FOR 2008

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

ACTION: General Notice.

SUMMARY: This document provides notice to customs brokers that the annual fee of \$138 that is assessed for each permit held by a broker, whether it may be an individual, partnership, association, or corporation, is due by February 15, 2008. Customs and Border Protection (CBP) announces this date of payment for 2008 in accordance with the Tax Reform Act of 1986.

DATES: Payment of the 2008 Customs Broker User Fee is due February 15, 2008.

FOR FURTHER INFORMATION CONTACT: Bruce Raine, Broker Compliance Branch, Trade Policy and Programs, (202) 863-6544.

SUPPLEMENTARY INFORMATION:

Background

CBP Dec. 07-01 amended section 111.96 of title 19 of the Code of Federal Regulations (19 CFR 111.96) pursuant to the amendment of section 13031 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (19 U.S.C. 58c) by section 892 of the American Jobs Creation Act of 2004, to establish that effective April 1, 2007 an annual user fee of \$138 is to be assessed for each customs broker permit and national permit held by an individual, partnership, association, or corporation.

The Customs and Border Protection (CBP) regulations provide that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which is published in the **Federal Register** annually. See 19 CFR 24.22(h) and (i)(9). Broker districts are defined in the General Notice entitled, "Geographical Boundaries of Customs Brokerage, Cartage and Lighterage Districts" published in the **Federal Register** on September 27, 1995 (60 FR 49971).

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99-514) provides that notices of the date on which the payment is due for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** by no later than 60 days before such due date. Please note that section 403 of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*, (Pub. L. 107-296) and Treasury Department Order No. 100-16 (see Appendix to 19 CFR Part 0) delegated general authority vested in the Secretary of the Treasury over customs revenue functions (with certain specified exceptions) to the Secretary of Homeland Security.

This document notifies customs brokers that for calendar year 2008, the due date for payment of the user fee is February 15, 2008. It is anticipated that for subsequent years, the annual user fee for customs brokers will be due on or about the twentieth of January of each year.

Dated: December 12, 2007

DANIEL BALDWIN,
*Assistant Commissioner,
Office of International Trade.*

[Published in the Federal Register, December 17, 2007 (72 FR 71422)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, December 19, 2007

The following documents of U.S. 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,
*Executive Director,
Regulations and Rulings Office of Trade.*

**MODIFICATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE CLASSIFICATION OF
CERTAIN COATED FABRICS**

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

ACTION: Modification of a classification ruling letter and revocation of treatment relating to the classification of certain coated fabrics.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is modifying a ruling letter relating to the classification of certain coated fabrics. CBP is also to revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on September 12, 2007, in Volume 41, Number 38, of

the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 2, 2008.

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, notice proposing to modify NY M81369, dated March 23, 2006, pertaining to the tariff classification of certain coated fabrics was published in the September 12, 2007, CUSTOMS BULLETIN, Volume 41, Number 38. No comments were received in response to the notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical

transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in the 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 M81369, CBP ruled, in part, that two woven fabrics coated on one side with a layer of clear polyurethane coating were classified in heading 5407, HTSUS, which provides for "woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404." Since the issuance of that ruling, CBP has reviewed the classification of the coated fabrics and has determined that the cited ruling is in error as it pertains to these fabrics.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY M81369 and is revoking or modifying any other ruling not specifically identified, to reflect the classification of these coated fabrics according to the analysis contained in proposed Headquarters Ruling Letter (HQ) W968299, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: December 13, 2007

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

Attachment

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ W968299
December 13, 2007
CLA-2 OT:RR:CTF:TCM W968299 KSH
CATEGORY: Classification
TARIFF NO.: 5903.20.2500

WILLIAM R. RUCKER, ESQ.
DRINKER BIDDLE GARDNER & CARTON
191 N. Wacker Drive
Suite 3700
Chicago, Illinois 60606-1698

RE: Modification of NY M81369; woven fabric coated with polyurethane plastics.

DEAR MR. RUCKER:

This letter is in response to your request of July 7, 2006 and supplemental letter of August 3, 2006, on behalf of your client Synthetic Resources, Inc., for reconsideration of New York Ruling Letter (NY) M81369, dated March 23, 2006, as it pertains to the classification of two woven fabrics coated on one side with polyurethane plastics under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). NY M81369 addressed the classification of four fabrics. However, the instant request for reconsideration only involves two of the styles.

In NY M81369, we determined that the coated fabrics were classified in heading 5407, HTSUSA. They were classified in subheading 5407.52.2060, HTSUS, which provides for "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404: Other woven fabrics, containing 85 percent or more by weight of textured polyester filaments: Dyed: Other, Weighing more than 170 g/m²." We have reviewed that ruling and found it to be in error.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on September 12, 2007, in Volume 41, Number 38, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

FACTS:

The two sample fabrics at issue are identified as style 6004530AU and style 10502220AU. They are woven and coated on one side with a clear polyurethane coating. The fabrics are used to create backpacks, luggage and similar articles. Style 6004530AU is a textured polyester oxford woven fabric made from 600 denier polyester thread. The weight of the polyester is 7.0 oz/yd² and comprises 79.55% of the weight of the fabric. The clear polyurethane coating weighs 1.8 oz./yd.² and comprises 20.45% of the weight of the fabric. Style 10502220AU is a nylon basket weave woven fabric made from 1050 denier nylon thread. The weight of the nylon is 12.4 oz./yd² and comprises 86.11% of the weight of the fabric. The clear polyurethane coating weighs 2.0 oz/yd² and comprises 13.89% of the total weight of the fabric.

ISSUE:

Whether the fabrics are classified in heading 5407, HTSUSA, as woven fabrics of synthetic filament yarn, or in heading 5903, HTSUSA, as textile fabrics impregnated, coated, covered or laminated with plastics.

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 of the Harmonized Tariff Schedule 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 Protection's (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).

Heading 5407, HTSUSA, provides for the classification of "Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404." Materials of heading 5404, HTSUS, include, in part, "strip and the like (for example, artificial straw) of synthetic textile materials of an apparent width not exceeding 5 mm."

Heading 5903, HTSUSA, provides for "[t]extile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902." Note 2 to Chapter 59 provides, in pertinent part:

Heading 5903 applies to:

(a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than:

(1) Fabrics in which the impregnation, coating or covering cannot be seen with the naked eye. . . ; for the purpose of this provision, no account should be taken of any resulting change of color.

The EN to heading 5903, HTSUSA, provides in relevant part:

This heading covers textile fabrics which have been impregnated, coated, covered or laminated with plastics (e.g., poly(vinyl chloride)).

Such products are classified here whatever their weight per m² and whatever the nature of the plastic component (compact or cellular), **provided:**

(1) That, in the case of impregnated, coated or covered fabrics, the impregnation, coating or covering can be seen with the naked eye otherwise than by a resulting change in colour.

Textile fabrics in which the impregnation, coating or covering cannot be seen with the naked eye or can be seen only by reason of a resulting change in colour usually fall in **Chapters 50 to 55, 58 or 60**. Examples of such fabrics are those impregnated with substances designed solely to render them crease-proof, moth-proof, unshrinkable or waterproof (e.g., waterproof gabardines and poplins). Textile fabrics partially coated or partially covered with plastics and bearing designs resulting from these treatments are also classified in **Chapters 50 to 55, 58 or 60**.

It is undisputed that the subject fabric has been coated with a clear polyurethane layer. At issue is whether this coating is visible to the naked

eye. If the coating is not visible to the naked eye, the fabrics will be excluded from heading 5903, HTSUSA, and will be classified in heading 5407, HTSUSA.

A fabric is considered a fabric of heading 5903, HTSUSA, if its impregnation, coating or covering of plastics is visible to the naked eye as required by Note 2(a)(1) to Chapter 59, HTSUSA, with no account taken of any resulting change in color. It is CBP's longstanding view that the wording of Note 2(a)(1), "visible to the naked eye," is a clear expression by the drafters of the Harmonized System that a significant, if not substantial, amount of material must be added to a fabric for it to be considered impregnated, coated or covered. The plastic material added to the fabric must be visibly distinguishable from the fabric without the use of magnification. CBP believes this criterion is satisfied when the application of plastics material visibly affects the surface character of the fabric (Headquarters Ruling (HQ) 967884, dated October 26, 2005); the plastic is visible in the interstices of the fabric (See HQ 961172, dated August 6, 1998); the thread or weave is blurred or obscured, (HQ 089772, September 11, 1991); or the surface of the fabric is leveled or smoothed and the coating itself creates a distinct visible pattern (Id.). These factors are not exclusive and none is determinative. See HQ W968300, dated February 8, 2007.

No account should be taken of any resulting change in only shine, reflectivity, dullness or other property which causes the viewer to see the effect rather than presence of plastic material. See generally HQ 967884, dated October 26, 2005, on the classification of certain pants with polyurethane coating; HQ 082219, dated November 21, 1988, on the classification of three fabrics; HQ 085245, dated August 31, 1989, on the classification of a men's nylon coat made of certain coated fabrics; HQ 087941, dated December 12, 1990, on the classification of certain fusible interlining fabrics from Japan; and HQ 084165, dated June 26, 1989, on the classification of certain fusible interlining fabrics.

Applying the "visible to the naked eye" test on the fabrics of style 6004530AU and style 10502220AU, using normally corrected vision in a well-lighted room, we find that the clear polyurethane coating has filled the gaps in the interstices. Accordingly, the coating is visible to the naked eye and the fabrics are classified in heading 5903, HTSUSA.

Our decision is in accord with HQ 950103, dated November 7, 1991, NY 885395, dated June 21, 1993 and NY A85467, dated August 13, 1998, in which substantially similar merchandise was classified in heading 5903, HTSUSA.

HOLDING:

By application of GRI 1, the fabrics are classified in heading 5903, HTSUSA. They are provided for in subheading 5903.20.2500, HTSUSA, which provides for "Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902: With polyurethane: Of man-made fibers: Other: Other." The general column one rate of duty is 7.5% *ad valorem*.

Merchandise classified in subheading 5903.20.2500, HTSUSA, falls within textile category 229. 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 negotia-

tions 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 on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at <http://otexa.ita.doc.gov>.

EFFECT ON OTHER RULINGS:

NY M81369 is hereby modified.

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

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

