U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, December 26, 2001.

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

JOHN DURANT,
(for Douglas M. Browning, Acting Assistant Commissioner,
Office of Regulations and Rulings.)

PROPOSED REVOCATION OF CUSTOMS RULING LETTER & TREATMENT RELATING TO TARIFF CLASSIFICATION OF PLASTIC CONTACT LENS CASE

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

ACTION: Notice of proposed revocation and modification of tariff classification ruling letters and treatment relating to the classification of a plastic contact lens case.

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 intends to revoke a certain ruling letter pertaining to the tariff classification of a plastic contact lens case. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before February 8, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Mary Beth Goodman, Textiles Branch, (202) 927–1679.

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke Headquarters Ruling Letter ("HQ") 082698, dated February 21, 1990, pertaining to the classification of a molded plastic contact lens case. Although in this notice Customs is specifically referring to one ruling, this notice also covers any other rulings on this merchandise, which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice and comment period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of the final decision of this notice.

In the aforementioned ruling, concerning the tariff classification of a contact lens case of molded plastic, the product was erroneously classified as a plastic article for the conveyance of goods under heading 3923 of

the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). However, the Explanatory Notes ("EN") to heading 3923 specifically limit the classification of products within heading 3923 to commercial goods. Therefore, a personal article such as a contact lens case is precluded from classification in heading 3923, HTSUSA. It is Customs view that the contact lens case is more properly classified in heading 4202, HTSUSA, as a specially shaped and fitted container. Heading 4202, HTSUSA, is divided into two portions. Those articles listed before the semi-colon are not restricted as to the material composition, whereas those articles listed in the second portion must be constructed of the materials specifically listed in the tariff *i.e.*, of leather or composition leather, sheeting of plastics, textile material, vulcanized fiber, or paperboard, or wholly or mainly covered with such materials or with paper. The subject merchandise is precluded classification within the second part of heading 4202 due to the molded plastic construction which is not a material specifically named in the second part of the heading. However, since goods in the first part of heading 4202, HTSUSA, may be of any material, classification is proper therein, since the contact lens case is specifically shaped and fitted and similar to the containers enumerated in the first part of the heading.

The articles enumerated in the EN's to heading 3923, HTSUS, are items, which by the nature of their size or use, are designated for a commercial purpose and not for "household use". The contact lens case is intended for personal use in order to organize, store, transport and protect the contact lenses when not worn by the individual. The small size of the case which is intended to only hold one pair of contact lenses would preclude any sort of "commercial" application. Therefore classification of the subject merchandise is precluded from heading 3923, HTSUSA and the case is more appropriately classified in heading 4202, HTSUSA. HQ 082698 is set forth as "Attachment A" to this document.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke HQ 082698, and any other ruling not specifically identified on identical or substantially similar merchandise to reflect the proper classification within the HTSUSA pursuant to the analysis set forth in Proposed Headquarter Ruling Letters (HQ) 965266 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 20, 2001.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 21, 1990.

CLA–2 CO:R:C:G 082698 NLP
Category: Classification
Tariff No. 3923.10.0000

MS. SIEGI SPYROPOULOS
ALLERGAN INTERNATIONAL
2525 Dupont Drive
Irvine, CA 92715

Re: Plastic contact lens storage case.

DEAR MS. SPYROPOULOS:

This is in response to your letter, dated May 23, 1988, requesting a tariff classification ruling for a plastic contact lens storage case under the Harmonized Tariff Schedule of the United States (HTSUS). A sample was submitted for examination.

Facts:

The contact lens storage case is made of injection molded plastic and is imported from Taiwan.

Issue:

Whether the plastic contact lens storage case is classifiable under subheading 4202.32, which provides for articles of a kind normally carried in the pocket or handbag with an outer surface of plastic sheeting, or heading 3923, which provides for articles for the conveyance or packing of goods, of plastics?

Law and Analysis:

The Explanatory Notes to the HTSUS are the official interpretation of the tariff at the international level. The Explanatory Notes to heading 4202 state that articles covered by the second part of the heading, i.e., "traveling bags, toiletry bags * * * and similiar containers", are limited by material. They must only be of the materials specified in heading 4202, or must be wholly or mainly covered with such materials. Subheading 4202.32.1000, HTSUS, provides for articles of a kind normally carried in the pocket or in the handbag: with outer surface of plastic sheeting: of reinforced or laminated plastics. Since the plastic contact lens storage case is not made of reinforced or laminated plastic, it cannot be classified under subheading 4202.32.1000.

Subheading 4202.32.2000, HTSUS, provides for articles of a kind normally carried in the pocket or in the handbag, with outer surface of plastic sheeting, other. Merchandise must be of plastic sheeting to be classified in this subheading.

Various dictionaries define the word sheet and sheeting as follows:

> The Random House Dictionary of the English Language (1983):
>
> sheet 2. a broad, relatively thin, surface layer or covering.
>
> 3. a relatively thin, usually rectangular form, piece, plate, or slab as of photographic film, glass, metal, etc..
>
> sheeting 1. the act of covering with or forming into sheet or sheets.
>
> Webster's Third New International Dictionary of the English Language, Unabridged (1986):
>
> sheet 5. a broad thinly expanded portion of metal or other substance.
>
> sheeting 1. a material in the form of sheets * * * b: material (as a plastic) in the form of continuous film * * *.

The above-cited definitions require a finding that an article which is made directly from a mass of plastic which never becomes a "sheet" or "sheeting" and which never has a "sheet" or "sheeting" applied to its surface cannot be classified under the provision for articles with outer surface of plastic sheeting in subheading 4202.32.2000. HRL 083600, dated May 24, 1989, dealt with the classification of a three-lipstick purse compact case, which was made of injection molded plastic. The ruling held that the compact was not made of plastic sheeting and was classifiable as plastic articles for the conveyance of goods

in heading 3923. The contact lens storage case at issue is also made of an injection mold plastic and, therefore, is not made of plastic sheeting and is not classifiable under subheading 4202.32.2000.

As to whether the lens case is an article for the conveyance or packing of goods, we note that the Explanatory Notes for heading 3923 state that the heading covers all articles of plastics commonly used for packing or conveyance of all kinds of products. Inasmuch as the lens case is a case used to convey contact lenses, it is classifiable under subheading 3923.10.0000 as articles for the conveyance or packing of goods, of plastic: boxes, cases, crates and similiar articles.

Holding:

The plastic contact lens storage case is classifiable under subheading 3923.10.0000, and it is dutiable at the rate of 3 percent ad valorem.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

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

CLA–2 RR:CR:TE 965266 mbg
Category: Classification
Tariff No. 4202.39.9000

MS. SIEGI SPYROPOULOS
ALLERGAN INTERNATIONAL
2525 Dupont Drive
Irvine, CA 92715

Re: Classification of a plastic contact lens case; Revocation of HQ 082698.

DEAR MS. SPYROPOULOS:

On February 21, 1990, U.S Customs issued Headquarters Ruling Letter ("HQ") 082698 to your company regarding the classification of under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA") of a plastic contact lens case. Upon review of HQ 082698, Customs has determined that the contact lens case was erroneously classified and HQ 082698 is hereby revoked for the reasons set forth below.

Facts:

The subject merchandise is a container used for the storage of contact lenses when the lenses are not worn. The merchandise is manufactured of molded plastic and measures approximately 1 inch wide. ½ of an inch high and 2 ¼ inches long. A contact lens is intended to be stored in each side of the container. The merchandise has two caps, labeled "L' and "R", which screw onto the base of the container. You have stated that the lens case was manufactured in Taiwan.

Issues:

Whether the subject contact lens case of molded plastic is properly classified in Chapter 39 as an article of plastics or in Chapter 42 as a container under the HTSUSA?

Whether the subject contact lens case is considered an "article for the conveyance of goods" in heading 3923, HTSUSA?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation ("GRIs"). GRI 1 provides that classification shall be determined according to the terms of the heading 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 ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. *See* T.D. 89–80.

Due to the plastic construction and intended purpose of the subject merchandise, multiple tariff headings must be considered for proper classification. The competing headings under the HTSUSA which must be considered for classification of the subject merchandise include: heading 3923, which provides for *inter alia*, articles for the conveyance or packing of goods, of plastics and heading 4202, which provides for, *inter alia,* containers.

I. Classification within Chapter 39, HTSUSA

A. Heading 3923, HTSUSA

Heading 3923, HTSUS, provides for articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics. Legal Note 2(ij), to Chapter 39 excludes from Chapter 39, saddlery or harness (heading 4201) or trunks, suitcases, handbags or other containers of heading 4202, HTSUS. The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN) to heading 3923 state:

> The heading excludes, *inter alia*, household articles such as dustbins, and cups which are used as tableware or toilet articles and do not have the character of containers for the packing or conveyance of goods, whether or not sometimes used for such purposes (heading 39.24), containers of heading 42.02 and flexible intermediate bulk containers of heading 63.05.

The articles enumerated in the EN's to heading 3923, clearly indicate items, which by the nature of their size or use, are designated for a commercial purpose and not for "household use". The contact lens case is intended for personal use in order to store, transport and protect the contact lenses when not worn by the individual. The small size of the case, which is intended to only hold one pair of contact lenses, would preclude any sort of "commercial" application and therefore classification of the subject merchandise is precluded from heading 3923, HTSUSA.

In HQ 963501, dated March 23, 2000, Customs reviewed the scope of heading 3923 and the types of articles said to be for articles for the conveyance or packaging of goods in a commercial sense. In HQ 963501, concerning the classification of a plastic tissue box, Customs stated:

> Customs first began to reconsider the scope of heading 3923, HTSUSA, by noting that the exemplars listed in the EN to heading 3923, HTSUSA, were used generally to convey or transport goods over long distances and often in large quantities. *See* HQ 087635, dated October 24, 1990; HQ 951404, dated July 24, 1992; and HQ 953841, dated September 27, 1993. Next, Customs indicated that heading 3923, HTSUSA, was generally reserved for articles used for shipping purposes. *See* HQ 089825, dated April 9, 1993; HQ 953275, dated April 26, 1993; and HQ 953458, dated April 16, 1993. In 1993, Customs took the position that heading 3923, HTSUSA, provided for cases and containers of bulk goods and commercial goods and not personal items. *See* HQ 954072, dated September 2, 1993. This position has been consistently followed since 1993. *See* HQ 954816, dated December 7, 1993; HQ 955660, dated September 27, 1994; HQ 955047, dated October 6, 1994; HQ 957894, dated December 14, 1995; HQ 957895, dated December 14, 1995; HQ 958174, dated January 31, 1996; HQ 959116, dated January 7, 1997; HQ 960199, dated May 15, 1997; HQ 960430, dated December 24, 1997; HQ 959780, dated February 17, 1998; HQ 959522, dated May 20, 1998; HQ 959846, dated October 28, 1998; HQ 961517, dated November 6, 1998; HQ 961049, dated January 5, 1999; and HQ 960811, dated February 3, 1999. Items such as sequined beaded waist bags, molded plastic carrying cases for drawing materials, molded plastic tote bags, molded plastic pencil cases and molded plastic hinged cases for computer disks have been classified outside of heading 3923, HTSUSA, based on findings that the articles were designed to carry personal effects. *See* HQ 954816, HQ 957894, HQ 959116, HQ 960199 and HQ 959780 (cited above). Similarly, the tissue box is designed to carry personal effects and is not designed to carry bulk or commercial goods. Accordingly, the tissue box is not properly classifiable in heading 3923, HTSUSA.

In regards to the subject contact lens case, Customs reaffirms the holding in HQ 963501, and similarly finds that the contact lens case is not classifiable in heading 3923, HTSUSA,

as it is not designed to transport bulk or commercial goods. Customs is in the process of reviewing prior rulings which have erroneously classified molded plastic articles of a personal nature such as contact lens cases, pencil holders, etc, within heading 3923, HTSUSA, and will revoke or modify any such rulings accordingly.

B. Heading 3926, HTSUSA

Heading 3926, HTSUSA, provides for "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914." The EN to heading 3926 indicate that the heading is the basket provision for plastic articles not described more specifically elsewhere in the tariff schedule. Customs finds that the plastic article is not classified in heading 3926, HTSUSA, because the contact lens case, which is specially shaped and fitted to hold contact lenses, is more specifically described in heading 4202, HTSUSA, for the reasons set forth below.

II. Classification within Chapter 42, HTSUSA

As previously stated, Legal Note 2 (ij) to Chapter 39, HTSUSA, provides, "This chapter does not cover * * * trunks, suitcases, handbags or other containers of heading 4202; ."

For application of this Legal Note, a determination must be made as to whether the subject contact lens case is considered a "container of 4202." The articles specifically enumerated within heading 4202, HTSUSA are "Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder boxes, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper ."

The EN to heading 4202 state, in pertinent part:

> This heading covers **only** the articles specifically named therein and similar containers.
>
> These containers may be rigid or with a rigid foundation, or soft and without foundation.
>
> [T]he articles covered by the first part of the heading may be of any material. The expression "similar containers" in the first part includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc.
>
> The articles covered by the second part of the heading must, however, be only of the materials specified therein or must be wholly or mainly covered with such materials or with paper (the foundation may be of wood, metal, etc.). The expression "similar containers" in this second part includes note-cases, writing-cases, pen-cases, ticket-cases, needle-cases, key-cases, cigar-cases, pipe-cases, tool and jewellery rolls, shoe-cases, brush-cases, etc

As referenced above, heading 4202, HTSUSA, is divided into two portions. Those articles listed before the semi-colon are not restricted as to the material composition, whereas those articles listed in the second portion must be constructed of the materials specifically listed in the tariff *i.e.*, of leather or composition leather, of sheeting of plastics, of textile material, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper. Application of the ENs to the subject merchandise would preclude classification within the second part of heading 4202 due to the molded plastic construction which is not a material specifically named in the second part of the heading. *See* Headquarters Ruling Letter (HQ) 950779, dated April 1, 1992.

However, since goods in the first part of the heading may be of any material, classification may be proper if the merchandise is determined to be specifically shaped and fitted. The first portion of heading 4202, HTSUSA, specifically lists trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers.

However, this heading encompasses the articles enumerated, as well as containers similar to these articles and is therefore relevant for discussion of the subject contact lens case. Under the rule of *ejusdem generis*, the phrase "similar articles" is limited to goods which "possess the essential characteristics or purposes that unite the articles enumerated *eo nomine*." *Totes, Inc. v. U.S.*, 69 F.3d 495, 498 (Fed. Cir. 1995) (citing *Sports Graphics, Inc. v. United States*, 24 F.3d 1390 (Fed. Cir. 1994)).

Furthermore, in *Totes Inc., v. United States*, 18 C.I.T. 919, 865 F. Supp. 867, 871 (1994), the Court of International Trade concluded that the "essential characteristics and purpose of the Heading 4202 exemplars are * * * to organize, store, protect and carry various items." The Court also ruled that by virtue of *ejusdem generis* the residual provision for "similar containers" in heading 4202, HTSUS, is to be broadly construed. It is evident from the above referenced court case that a broad interpretation as to the types of articles that are classifiable as similar containers to those named in heading 4202, is clearly supported and upheld by the Court of International Trade. The subject contact lens case is of a kind designed to provide storage, protection, organization and to a certain extent portability, purposes which unite the exemplars of heading 4202, HTSUS, as confirmed in *Totes*.

Pursuant to the rule of *ejusdem generis*, contact lens cases have previously been classified in heading 4202, HTSUSA, in New York Ruling Letter ("NY") B87047, dated July 23, 1997, and NY A83640, dated June 12, 1996. However, in each of these rulings the contact lens cases under consideration were not constructed of molded plastic. In NY B87047, the contact cases was constructed of leather and in NY A83640, the contact case was constructed with an outer surface of textile materials.

As the contact lens case is not one of the named exemplars, its classification in the first portion of heading 4202, HTSUSA, depends on its similarity to one of the named articles. The contact lens case is not similar to the first six articles. The first six articles are generally large articles, often hand-carried by means of an attached handle and used to carry items other than smaller items normally carried in the pocket or handbag. The contact lens case is small and designed to carry only one pair of contact lenses with one lens placed in each compartment. Therefore, the contact lens case is somewhat similar to the remaining six articles in the first part of the heading. These six containers are made to carry one specific article (although some may also accommodate small accessories or parts like a lens cap or cleaning rod), and are often form-fitted to the particular item to be carried. Accordingly, we find that the contact lens case is classifiable as a specially shaped or fitted container in the first part of heading 4202, HTSUSA.

Holding:

HQ 082698, dated February 21, 1990 is hereby revoked.

The subject contact lens case is properly classified in subheading 4202.39.9000, HTSUSA, which provides for "Trunks, * * *, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; * * *: Articles of a kind normally carried in the pocket or in the handbag: Other: Other." The general column one duty rate is 20 percent *ad valorem*.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF A PORTABLE VIDEO PLAYER WITH A TEXTILE CONTAINER

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to the tariff classification of a portable video player with a textile container.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a portable video player with a textile container and to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before February 8, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 927–2391.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

ing reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a portable video player with a textile container. Although in this notice Customs is specifically referring to one ruling, NY F86942, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

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

In NY F86942, dated May 23, 2000, set forth as "Attachment A" to this document, Customs found that a portable video player was classified in subheading 8521.10.3000, HTSUS, as a video recording or reproducing apparatus, whether or not incorporating a video tuner, magnetic tape type, color, cartridge or cassette type, not capable of recording. Customs also found that the textile container for the portable video player was classifiable in subheading 4202.92.9026, HTSUS, which provides for trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar

containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper; other, with outer surface of sheeting of plastic or of textile materials; other, other, other, with outer surface of textile materials; other, of man-made fibers; and subject to quota and/or visa requirements.

Customs has reviewed the matter and determined that the correct classification of the portable video player and its container is in subheading 8528.21.55, HTSUS, which provides for reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors; video monitors, color, with a flat panel screen; incorporating video recording or reproducing apparatus; with a video display diagonal not exceeding 34.29 cm, and the textile container will not be subject to quota and/or visa requirements pursuant to General Rules of Interpretation (GRIs) 5(a).

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY F86942 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 964149 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 21, 2001.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 23, 2000.

CLA–2–85: RR: NC: 1:08 F86942
Category: Classification
Tariff No. 4202.92.9026 and 8521.10.30000

MR. DON M. OBERT
FOLLICK AND BESSICH
33 Walt Whitman Road Suite 204
Huntington Station, NY 11746

Re: The tariff classification of a portable video player from China.

DEAR MR. OBERT:

In your letter dated May 3, 2000, on behalf of your client Audiovox you requested a tariff classification ruling.

The item in question is denoted as the Audiovox Rampage VBP 1000 Portable Video Cassette Player. It is indicated that this item will be imported as a set. Based upon the descriptive literature the set is composed of the video cassette player with a 4″ LCD screen, the nylon carrying case, mounting straps, AC/DC power adapter and power cables. All of the items will be packaged for sale at the retail level. It is important to note that based upon the descriptive literature the video cassette player is so designed as to enable the user to view the video images, generated by the video cassette player, on a television receiver as well as the incorporated LCD pop-up 4″ screen.

The question of classification concerns whether or not the VBP 1000 portable cassette player and accompanied items are to be considered as goods put up in sets for retail sale and whether the nylon carrying case is classified according to GRI 5. Explanatory Note X to GRI 3b provides for the purpose of this rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:

> A. Consist of at least two different articles which are, prima facie, classifiable in different headings.
> B. Consist of products or articles put up together to meet a specific activity: and
> C. Are put up in a manner suitable for sale to users without repackaging (e.g. in boxes or cases or on boards).

The VBP 1000 portable video cassette player with the nylon carrying case, mounting straps, AC/DC power adapter and power cables which are packaged together for retail sale does meet the definition of a set. There are at least two articles, which are, prima facie, classifiable in different headings. The video cassette player is classified under HTS provision 8521.10 and the nylon carrying case is classified under HTS provision 4202.92. The articles are put up together to meet the specific activity of portable video cassette viewing and based upon the information provided the entire package will be offered for sale at the retail level without repackaging. Since the articles constitute a set and classification cannot be made in accordance with GRI 3a, the essential character of the set must be determined in accordance with GRI 3b. EN VIII to GRI 3b states that:

> The factor, which determines essential character, will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods. After consideration it is the opinion of this office that the VBP 1000 portable video cassette player imparts the essential character of the set.

The applicable subheading for the VBP 1000 portable cassette player set will be 8521.10.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for Video recording or reproducing apparatus, whether or not incorporating a video tuner: Magnetic tape type, color, cartridge or cassette type: Not capable of recording. The rate of duty will be free.

The Informed Compliance Publication of the U.S. Customs Service, September 1999, covers the appropriateness of GRI 5 in relation to holders, cases and other containers as well as quota/visa requirements for textile articles within a set. It is stated; "Nowhere in GRI 3b or in the corresponding ENs does it state that GRI 5 should apply to any holders, containers, etc., of a proposed set. Therefore, with regard to determining whether a proposed set which includes a holder, case or other container constitutes a set, we do not believe that the use of GRI 5, or its embodied principals, is appropriate". Furthermore, "Where a textile article is part of a set found to be a GRI 3b set put up for retail sale, the textile article remains subject to quota and/or visa requirements, regardless of where the set is classified" (Note 54 F.R. 35223, 1989 and HQ Ruling 087180 dated January 11, 1991).

Therefore this office concludes that the textile carrying case is to be classified separately and subject to quota/visa requirements whether it is imported with the set or individually.

The applicable subheading for the textile carrying case will be 4202.92.9026, Harmonized Tariff Schedule of the United States (HTS), which provides for Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map case, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper: Other: With outer surface of sheeting of plastic or of textile materials: Other: Other * * * Other: Of man-made fibers

(670). The rate of duty will be 18.6 percent ad valorem. Articles so classified are subject to textile quota/visa restrictions under category 670.

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 Michael Contino at 212–637–7039.

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

[ATTACHMENT B]

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

CLA–2 RR:CR:GC 964149 KBR
Category: Classification
Tariff No. 8528.21.55

JOHN BESSICH
FOLLICK & BESSICH
33 Walt Whitman Road
Suite 204
Huntington Station, NY 11746

Re: Reconsideration of NY F86942; Portable Video Player with a Textile Container.

DEAR MR. BESSICH:

This is in reference to your letter dated June 8, 2000, on behalf of Audiovox Corp., in which you requested reconsideration of New York Ruling Letter (NY) F86942, issued to you by the Customs National Commodity Specialist Division, on May 23, 2000, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a portable video player with a textile container.

Facts:

NY F86942 concerns the Audiovox Rampage VBP 1000 Portable Video Cassette Player. It comprises a VHS format video cassette player with a flip-up 4 inch LCD color monitor. The player does not have a television receiver or tuner capability and cannot record. The controls for turning on the power, playing a cassette tape and adjusting the volume are on the front of the player. The player has front video/audio input jacks (Video In, Audio In R, Audio In L). There are jacks for 2 sets of headphones on the front. There are two 3¼ inch speakers built into the unit, one on each side of the player. There is no video output jack for viewing on a monitor or television other than the attached flip-up 4 inch monitor.

A nylon container, mounting straps, AC/DC power adapter and power cables are also included with the player. The nylon container is made to the specific dimensions of the player. There is an attached shoulder strap on the case for carrying the player. The case is padded to protect the player and the sides have 4 rings for the straps to attach the case to a car seat to secure the player in a vehicle. There are also loop straps attached to the case for securing the player with a standard automobile seat belt. The case has 2 mesh patches, one on each side of the case, located where the speakers appear on the player, so that the speakers may be heard through the case. There is a zippered bottom accessory compartment made for holding the power cables and a reinforced opening in the bottom of the case for the power cables to attach from the player to an external power source. The front of the case has 2 zippered mesh gussets which when unzipped allow the player to hang at a 15 degree angle for proper viewing of the monitor, easier access to the player's controls and also allows the speakers to be heard. There is a thin zippered compartment along the front of the case.

In NY F8692 it was determined that the portable video cassette player was a video recording or reproducing apparatus, whether or not incorporating a video tuner, magnetic tape type, color, cartridge or cassette type, not capable of recording, classifiable under subheading 8521.10.3000, HTSUS. The case for the player was found to be separately classifiable as a textile case under subheading 4202.92.9026, HTSUS, and subject to textile quota/visa requirements. We have reviewed that ruling and determined that the classification of the portable video cassette player and textile container is incorrect. This ruling sets forth the correct classification.

Issue:

What is the proper classification under the HTSUS of the subject portable video cassette player and textile container?

Law and Analysis:

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

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

The HTSUS provisions under consideration are as follows:

4202	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper:
	Other:
4202.92	With outer surface of sheeting of plastic or of textile materials:
	Other:
4202.92.90	Other
8521	Video recording or reproducing apparatus, whether or not incorporating a video tuner:
8521.10	Magnetic tape-type
	Color, cartridge or cassette type:
8521.10.30	Not capable of recording
8528	Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors:
	Video monitors:
8528.21	Color:
	With a flat panel screen:
	Incorporating video recording or reproducing apparatus:
8528.21.55	With a video display diagonal not exceeding 34.29 cm

The portable video cassette player is comprised of two components, the cassette player and an LCD monitor. Section XVI Note 4, HTSUS, states that "[w]here a machine * * * consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other devices) intended to contribute together to a clearly defined function covered by one of the headings in chapter 84 or chapter 85, then the whole falls to be classified in the heading appropriate to that function." The in-

stant article has the clearly defined function of playing cassette tapes for viewing. Video cassette players by themselves are generally classified in heading 8521, HTSUS, as video recording or reproducing apparatus. However, exclusionary note (b) in the ENs for heading 8521, HTSUS, excludes video monitors from being classified in that heading.

Video monitors are classifiable in heading 8528, HTSUS. This heading also includes reception apparatus for television. Video monitors use the same technology as a television, using a cathode ray tube (CRT) or a liquid crystal display (LCD) to present a visual display on a screen. An LCD is a type of flat panel screen. A video monitor differs from the standard "television" in that it does not have a tuner to receive a broadcast television signal. A monitor requires a separate device to provide the data it will reproduce on its screen. This can be a device with a receiver of a broadcast television signal, a camera feeding a live picture, a device which plays a cassette tape or DVD, or a device which plays a game. The video monitor in this case has no tuning capability, but accepts an electrical impulse from the video cassette player which the monitor converts to a visual display on an LCD screen. This uses the same type of signal that a normal household television or a video monitor would accept from a standard home video cassette player. EN (6) for heading 8528, HTSUS, includes video monitors as described with an LCD screen within this heading.

Color video monitors are classified in subheading 8528.21, HTSUS. Further, subheading 8528.21.55, HTSUS, describes the instant article in its entirety, as a video monitor, color, with a flat panel screen, incorporating video recording or reproducing apparatus, with a video display diagonal not exceeding 34.29 cm. Therefore, the instant portable video player in its entirety is properly classified in subheading 8528.21.55, HTSUS.

Now, we will consider the classification of the included textile container. GRI 5(a) states:

> Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character".

The ENs for GRI 5(a) state that this rule covers only containers which:

> (1) are specifically shaped or fitted to contain a specific article or set of articles, i.e., they are designed specifically to accommodate the article for which they are intended. Some containers are shaped in the form of the article they contain;
>
> (2) are suitable for long-term use, i.e., they are designed to have a durability comparable to that of the articles for which they are intended. These containers also serve to protect the article when not in use (during transport or storage, for example). These criteria enable them to be distinguished from simple packings;
>
> (3) are presented with the articles for which they are intended, whether or not the articles are packed separately for convenience of transport. Presented separately the containers are classified in their appropriate headings;
>
> (4) are of a kind normally sold with such articles; and
>
> (5) do not give the whole its essential character.

In this instance we find that the textile container, when imported with the article, qualifies as a GRI 5(a) container. It is specifically shaped and fitted for the portable video cassette player. The mesh panels are specifically located to allow the sound to be heard from the speakers. The container is imprinted with the name of the article. The container has gussets which are only useful for angling the player for the correct viewing angle in a vehicle and also allowing the sound to be heard through the speaker. The container has metal loops for securing it to a vehicle and an opening in the bottom through which the power cord may be attached. Although the player may be used in a home and the container would not be needed, because of the small size of the LCD screen, the player is unlikely to be used in a home where a full size television would be available. The intent of this article is clearly its portability. Further, if it is used in a home, we believe that the padded case would likely still be used to protect the article. The container does not provide the essential character to the portable video cassette player. Therefore, the textile container qualifies as a container under GRI 5(a). As such, the textile container is included under the same classification with the video cassette player. Further, since the textile container qualifies under GRI 5(a), it is not subject to quota or visa requirements. *See* NY C84178 (February 5, 1998), NY B89146 (September 8, 1997).

You state that Audiovox may import some containers separately (unassociated with the video cassette player) and empty. These would be used to replace defective containers. In that situation, the containers which are imported separate from the video cassette players

will be separately classifiable in subheading 4202.92.9026, HTSUS, and subject to quota and visa requirements. *See, e.g.,* HQ 962439 (April 9, 2001) (extra containers imported empty do not qualify under GRI 5, but must be classified separately).

Holding:

Pursuant to GRI 1 and 5(a), the portable video cassette player with a textile container, are classified in subheading 8528.21.55, HTSUS, as reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus; video monitors and video projectors, video monitors, color, with a flat panel screen, incorporating video recording or reproducing apparatus, with a video display diagonal not exceeding 34.29 cm.

Extra textile containers are classified in subheading 4202.92.9026, HTSUS, as trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper; other; with outer surface of sheeting of plastic or of textile materials; other; other; of man-made fibers; carry quota category 670, and will be subject to quota and visa requirements.

NY F86942, dated May 23, 2000, is **revoked.**

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF THE PALM VII™ AND PALM VIIx™ HANDHELD ELECTRONIC DEVICES

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

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of the Palm VII™ and Palm VIIx™ handheld electronic devices.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the tariff classification of the Palm VII™ and Palm VIIx™ handheld electronic devices under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on November 21, 2001, in the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 11, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Peter Beris, General Classification Branch, (202) 927–1726.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to Customs obligations, a notice was published on November 21, 2001, in Vol. 35, No. 47 of the CUSTOMS BULLETIN, proposing to revoke New York Ruling Letter ("NY") F89667, dated August 10, 2000, in which Customs classified the Palm VII™ and Palm VIIx™ handheld electronic devices under subheading 8470.10.0060, HTSUS, which provides for "* * * pocket-size data recording, reproducing and displaying machines with calculating functions * * * [o]ther." No comments were received in response to this notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on

a specific ruling concerning the merchandise covered by this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY F89667 to reflect the proper classification of the Palm VII™ and Palm VIIx™ in subheading 8471.30.0000, HTSUS, which provides for "[a]utomatic data processing machines * * * portable digital automatic data processing machines, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display * * *." pursuant to the analysis in HQ 964880, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded 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 21, 2001.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 21, 2001.

CLA–2 RR: CR: GC 964880 TPB
Category: Classification
Tariff No. 8471.3000,
8524.39.4000, and 8524.99.4000

DONALD FISCHER
PRICEWATERHOUSECOOPERS
333 Market Street
San Francisco, CA 94105

Re: Palm VII™ and Palm VIIx™ handheld electronic devices; Palm VII™ Series Retail Sets; Revocation of NY F89667.

DEAR MR. FISCHER:

This is in response to your letter dated February 27, 2001, requesting reconsideration of New York Ruling Letter F89667, dated August 10, 2000, which was issued to counsel on behalf of Palm, Inc. ("Palm"), whom you are now representing. NY F89667 dealt with the classification of the Palm VII™ and Palm VIIx™ handheld electronic devices under the Harmonized Tariff Schedule of the United States ("HTSUS"). In that ruling, the Palm VII™ and VIIx™ were classified under subheading 8470.10.0060, HTSUS, which provides for pocket-size data recording, reproducing and displaying machines with calculating functions * * * other.

Pursuant to 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 Imple-

mentation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY F89667 was published on November 21, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 47. No comments were received in response to that notice.

Facts:

The merchandise under consideration is the Palm VII™ and Palm VIIx™ handheld electronic devices. The Palm VII™ and Palm VIIx™ both measure 5.25 inches (13.34 cm) in height by 3.25 inches (8.26 cm) in width by .75 inches (1.91 cm) deep. The Palm VII™ and Palm VIIx™ employ the Palm Operating System version 3.2.0 ("Palm OS®") that controls the running of programs and the standard applications such as the date book, memo pad and calculator which are stored in saved memory and executed upon command. The Palm VII™ utilizes a Motorola M68EZ328 (16 MHz Microprocessor) central processing unit ("CPU") and comes with 2 MB of installed random access memory ("RAM") and 2 MB of installed read only memory ("ROM"). The Palm VIIx™ uses a Motorola M68VZ328 (24 MHz Microprocessor) CPU and comes equipped with 8 MB of installed RAM and 8 MB of installed ROM.

Both these Palm models include built-in two-way wireless radios with integrated antennas. They allow integrated wireless data access to the Internet without use of accessories. It is noted that the radio function is limited to Internet access and operates separately from most of the basic program functions. Both Palm models also include a touch sensitive keyboard, handwriting recognition software (Graffiti®) keyboard, an Infrared Port and LCD display screen.

The Palm VII™ and VIIx™ have pre-installed applications that feature a date book, address book, memo pad, to do list, desktop e-mail connectivity, expense tracking, calculator, HotSync® software (allowing local and remote synchronization with a user's desktop computer), iMessenger™ application, Web clipping applications, and Internet-ready connectivity (with TCP/IP software to support Internet based applications). Additionally, the devices contain sufficient memory for the installation of other program functions available for the Palm series devices. The Palm VII™ and VIIx™ come with desktop organizer software (for installation on a desktop computer) which features a date book, address book, to do list, memo pad, expense report templates, TAB delimiter, TXT and desktop e-mail connectivity. As indicated by the handbook included with the sample, the software may be on a CD-ROM or diskettes.

The Palm OS® is an open operating system which has programming tools readily available to any user either directly from Palm™ or other commercial sources that allow a user to create various programs, either directly on the Palm™ device, or on a host computer that can be downloaded to the Palm™, and executed on demand. A variety of software applications are available for the user from multiple sources (i.e., freeware, shareware, commercial sources).

Although the Palm VII™ or VIIx™ may be imported separately, the devices also are imported as a set which includes: a Palm VII™ or VIIx™ handheld electronic device, a HotSync® cradle, Palm Desktop organizer software, handbook, getting started guide, batteries, DB–25 adapter and a protective carrying case.

Issue:

Are the Palm VII™ and VIIx™ handheld electronic devices properly classified under heading 8470, HTSUS, as pocket-size data recording, reproducing and displaying machines with calculating functions; heading 8471, HTSUS, as hand-held computers; or under heading 8525, HTSUS, as transmission apparatus?

Law and Analysis:

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

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

The HTSUS provisions under consideration are as follows:

8470	Calculator machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket issuing machines and similar machines incorporating a calculating device; cash registers:
8470.10.00	Electronic calculators capable of operation without an external source of electric power and pocket-size data recording, reproducing and displaying machines with calculating functions
8471	Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included:
8471.30.00	Portable digital automatic data processing machines weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display
8524	Records, tapes and other recorded media for sound or other similarly recorded phenomena, including matrices and masters for the production of records, but excluding products of chapter 37:
8524.39	Other:
8524.39.4000	For reproducing representations of instructions, data, sound and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine; proprietary format recorded discs.
8524.99	Other:
8524.99.4000	Other.
8525	Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras; still image video cameras or other video camera recorders:

You state in your letter that the Palm VII™ series of electronic devices are digital devices that are classifiable as automatic data processing machines under heading 8471, HTSUS. Automatic data processing ("ADP") machines are commonly and commercially known as computers. Note 5(A) to chapter 84, HTSUS, provides a definition for the term "automatic data processing machines" for the purposes of heading 8471. The definition is expressed in terms of the abilities an ADP machine possesses. Chapter 84, Note 5 (A)(a) states that a digital machine must be capable of:

(1) storing the processing program or programs and at least the data immediately necessary for execution of the program;
(2) being freely programmed in accordance with the requirements of the user;
(3) performing arithmetical computations specified by the user; and
(4) executing, without human intervention, a processing program which requires them to modify their execution, by logical decisions during the processing run.

We take the arguments you make in your submission into consideration when making a determination as to whether or not the Palm VII™ series meets the requirements of Note 5(A) of chapter 84.

Note 5(A)(a)(1): Storing the Processing Program or Programs and at Least the Data Immediately Necessary for Execution of the Program

The Palm VII™ and VIIx™ satisfy Note 5(A)(a)(1) in that they are capable of storing the processing program or programs and at least the data immediately necessary for the execution of programs in their RAM and ROM by (1) incorporating an operating system that controls the running of other programs, and (2) containing sufficient memory to store and execute standard applications such as the date book, memo pad and calculator, as well as other programs which may be added or created by the user.

Note 5(A)(a)(2): Being Freely Programmed in Accordance with the Requirements of the User

Customs has previously dealt with the issue of whether an ADP machine is capable of being freely programmed in accordance with the requirements of the user, or "freely programmable." In HQ 952862, dated November 1, 1994, Customs considered the

classification of systems for radio frequency collection and transmission of data for industrial control. In that ruling, Customs determined that the data collection devices, while having some processing capability, were not "freely programmable." In determining whether a particular machine was "freely programmable," Customs examined the definition of the terms "computer" and "personal computer." HQ 952862 indicated that:

> A computer, which is freely programmable, is a "[g]eneral-purpose machine that processes data according to a set of instructions that are stored internally either temporarily or permanently." A. Freedman, The Computer Glossary, Sixth Edition, pg. 95 (1993). A personal computer "is functionally similar to larger computers, but serves only one user. It is used at home and in the office for almost all applications traditionally performed on larger computers." Computer Glossary (1993), pg. 400. Personal Computers "are typically used for applications, such as word processing, spreadsheets, database management and various graphics-based programs, such as computer-aided design (CAD) and desktop publishing. They are also used to handle traditional business applications, such as invoicing, payroll and general ledger. At home, personal computers are primarily used for games, education and word processing." A. Freedman, The Computer Glossary, Fourth Edition, pg. 524 (1989). Because they can perform any of the above-listed applications, personal computers are considered to be "freely programmable."

Customs notes the rapid evolution of the modern day digital computer and its expansion in capabilities over the years. The so-called "first generation" of computers was characterized by the use of wired circuits containing vacuum tubes and used punched cards as the main storage medium. These machines, such as Colossus (designed to decode German messages during World War II), the Harvard Mark I and ENIAC ("Electronic Numerator, Integrator, Analyzer, and Computer"; some sources have "and Calculator") were enormous in size and utilized made-to-order operating instructions to accomplish specific tasks. Each computer had a different binary-coded program, called a "machine language," that instructed it on how to operate. Changing the programming of the computer required an operator to change the wiring of that machine, often by changing a plug board on the side of a computer.

"Second generation" computers were defined by the replacement of vacuum tubes with solid-state components. The invention of the transistor allowed computers to become smaller, faster and more reliable. By 1965, most businesses routinely used second generation computers to process financial information. Using magnetic-core memory, these computers were able to store programs. Because programs were now contained inside a computer's memory, the computer could run a specific function, and then quickly change to perform another function, without the need to physically change the machine. More sophisticated programming languages, such as FORTRAN (Formula Translator) and COBOL (Common Business-Oriented Language) replaced the binary code of the computers predecessors, and new careers such as computer programmer and analyst were created.

"Third generation" computers benefited from the invention of integrated circuits and semiconductors. These are also the first computers to utilize an operating system that would allow the computer to run a variety of programs at once with a central program that monitored and coordinated the computers' memory.

"Fourth generation" computers became smaller and more affordable. By the mid-1970's, computers were brought to the general public by companies such as Commodore, Radio Shack and Apple. IBM introduced the personal computer ("PC") in the early 1980's. These computers became more powerful and entire software industries were created to provide programs that utilized the processing functions of these machines.

Now, the "fifth generation" of computers is in its infancy, and is characterized by the utilization of superconductors and parallel processing, which allows many CPU's to work as one.

Throughout this span, the ability of the computer to be freely programmed in accordance with the requirements of the user has become simpler. From machines that were dedicated to a single purpose (such as Colossus) to having the ability to switch between programs to serve different functions, computers have become more adaptable, and thus become freely programmable.

Customs believes that a freely programmable ADP machine is one that applications can be written for, does not impose artificial limitations upon such applications, and will accept new applications that allow the user to manipulate the data as deemed necessary by the user.

The Palm VII™ series handhelds satisfy Note 5(A)(a)(2) in that they are freely programmed in accordance with the requirements of the user in several ways:

Directly on the Palm VII ™ series: various commercial development tools can be used to program the Palm VII™ series devices without any host computer, such as Pocket C, Quatrus Forth and LispMe. Programs are written by the user in a third generation language on the Palm memo pad and then compiled using the computer. The compiled program is then stored to be executed on demand on the device.

With a host computer to generate a generic application: a generic program can be developed in a host computer using the appropriate high-level development environment (e.g., Java). The program is checked and encoded in a generic way. It can then be downloaded to the Palm VII™ series via the Hotsync, where it is stored and retained. When loaded, it can be executed on demand on top of the related runtime engine to complete the task required by the user.

With a host computer to generate a native application: a Palm specific program can be developed for the Palm VII™ series handheld device with a host computer (with Windows, Macintosh, Unix, etc. OS) using the appropriate development tools and third generation language (e.g., Code Warrior C, C). The program is compiled in machine language, which the computer can read, and downloaded to the Palm, where it is stored and retained. The program can then be executed on demand.

In analyzing whether Note 5(A)(a)(2) is satisfied, we also considered the following pertinent factors:

(a) the Palm Operating System is an open operating system;

(b) programming tools are readily available to any user either directly from Palm or from other commercial sources;

(c) the fact that hundreds of software applications are currently available for the Palm OS through a variety of vendors who distribute them either as freeware, shareware, or commercial applications. These range in function and utility from business (such as code-scanning inventory trackers) and educational (such as grade-calculating spreadsheets) programs to engineering (such as car-engine diagnostics) and other programs.

Note 5(A)(a)(3): Performing Arithmetical Computations Specified by the User

The Palm VII™ series handhelds satisfy Note 5(A)(a)(3) in that the Palm VII™ series each contain a Motorola microprocessor which can perform complex arithmetic computations. For example, using a computer programming language, the user may create a program which instructs the device to add simple integers together, or compute more complex arithmetical instructions.

Note 5(A)(a)(4): Executing, Without Human Intervention, a Processing Program Which Requires Them to Modify Their Execution, by Logical Decision During the Processing Run

The Palm VII™ series handhelds appear to satisfy Note 5(A)(a)(4) in that they can execute, without human intervention a processing program which requires the devices to modify their execution, by logical decision during a processing run. It is possible to write a program using the aforementioned applications that contain logic instructions. Using logical operators such as "and," "or," "not" and using Pocket C, one can compile and then execute the program without human intervention.

After careful consideration and examination of your arguments as to the features, functions and capabilities of the Palm VII™ series, for the preceding reasons, we have come to the conclusion that the Palm VII™ and VIIx™ meet the requirements set forth in Note 5(A)(a) of chapter 84.

The Palm VII™ and VIIx™ are handheld electronic devices combined with a two-way wireless radio. As such, they are composite machines under Section XVI, Note 3, HTSUS, which provides as follows:

> Unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines adapted for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

As noted above, the articles consist of a handheld electronic device that is coupled with a two-way wireless transmitter/receiver with its own integrated antenna. The wireless ra-

dio component of the Palm VII series allows two-way wireless connections to the Internet. The articles at issue here principally function as handheld electronic devices whose capabilities are enhanced by the addition of wireless and infrared connectivity to enable the transmission and reception of data. Even without the wireless capabilities, the Palm VII series would still be able to function as organizers, address books, or run various other utility programs available for the devices. For this reason, we find that by the terms of Note 3 to Section XVI, the articles do not fall to be classified in heading 8525.

Through application of GRI 1, utilizing the terms of the headings and relative section and chapter notes, Customs finds that the Palm VII™ series handheld electronic devices meet the terms of heading 8471, HTSUS. For the foregoing reasons, the Palm VII™ series handheld electronic devices are classified under subheading 8471.30.00, HTSUS, which provides for: "[a]utomatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included: Portable digital automatic data processing machines weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display."

Because the Palm VII™ series of handheld electronic computers are defined for tariff purposes as ADP machines of heading 8471, HTSUS, they are precluded from classification under heading 8470, HTSUS. The ENs to heading 8470 indicate that the heading **does not cover**: (a) data processing machines of **heading 84.71** (emphasis original, page 1401).

Palm Retail Sets

As indicated above, the Palm VII™ and VIIx™ could be imported both separately in bulk or as retail sets packaged with additional components such as a HotSync cradle, Palm Desktop Software, a handbook and guide, two AAA batteries, a DB–25 adapter and a protective carrying case. If imported as packaged sets, the goods are ready for retail sale without the need for repackaging.

The classification of goods put up in sets for retail sale is governed by GRI 3(b). GRI 3(b) provides, in relevant part, that goods put up for retail sale shall be classified as if they consisted of the material or component which gives them their essential character. According to the ENs for GRI 3(b), "goods put up in sets for retail sale" refers to goods which:

> (1) consist of at least two different articles which are, *prima facie*, classifiable in different headings;
> (2) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
> (3) are put up in a manner suitable for sale directly to users without repacking.

As indicated in your letter, the Palm series handheld retail sets meet all three of the ENs criteria for "goods put up in sets for retail sale." First, the Palm VII™ handheld retail sets consist of numerous articles, which, if imported separately, would be classifiable in different headings. Second, all of the components placed in the Palm VII™ handhelds retail sets are put up together to allow the Palm VII™ handhelds to function as portable computers. Third, in their imported condition, the Palm VII™ handheld retail sets are packaged in a manner suitable for retail sale to the ultimate purchaser, without the need for further repackaging. Accordingly, pursuant to GRI 3(b), the Palm VII™ series handheld retail sets are properly classified, as are single units, under subheading 8471.30.00, HTSUS, which is the subheading under which the Palm VII™ series handhelds, which provide the retail sets with their essential character, are classified.

However, Chapter 85, Note 6 states that, "[r]ecords, tapes and other media of heading 8523 or 8524 remain classified in those headings, whether or not they are entered with the apparatus for which they are intended." Thus, the applicable subheading for the Palm Desktop organizer software on a CD-ROM will be 8524.39.40, HTSUS, which provides for "[r]ecords, tapes and other recorded media for sound or other similarly recorded phenomena * * * [d]iscs for laser reading systems: [o]ther: [f]or reproducing representations of instructions, data, sound and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine * * *"

The applicable subheading for the Palm Desktop organizer software on diskettes will be 8524.99.40, HTSUS, which provides for "[r]ecords, tapes and other recorded media for sound or other similarly recorded phenomena * * * [o]ther: [o]ther: [o]ther."

Holding:

For the reasons stated above, the Palm VII™ and VIIx™ handheld computers, when imported separately, are to be classified under subheading 8471.30.00, HTSUS, which provides for "[a]utomatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included: Portable digital automatic data processing machines weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display."

The applicable classification for the Palm VII™ series retail set will also be subheading 8471.30.00, HTSUS.

The applicable subheading for the Palm Desktop organizer software on a CD-ROM will be 8524.39.40, HTSUS, which provides for "[r]ecords, tapes and other recorded media for sound or other similarly recorded phenomena * * * [d]iscs for laser reading systems: [o]ther: [f]or reproducing representations of instructions, data, sound and image, recorded in a machine readable binary form, and capable of being manipulated or providing interactivity to a user, by means of an automatic data processing machine * * *"

The applicable subheading for the Palm Desktop organizer software on diskettes will be 8524.99.40, HTSUS, which provides for "[r]ecords, tapes and other recorded media for sound or other similarly recorded phenomena * * * [o]ther: [o]ther: [o]ther."

Effect on Other Rulings:

NY F89667, dated August 10, 2000, is revoked. In accordance with 19 U.S.C. 1625 (c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO COMPLIANCE WITH ACTUAL USE REGULATIONS

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

ACTION: Notice of proposed revocation of ruling letter and revocation of treatment relating to compliance with actual use regulations.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling relating to the showing of intent as to actual use under section 10.134 of the Customs Regulations (19 CFR 10.134), and to revoke any treatment Customs has previously accorded to substantially identical transactions. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before February 8, 2002.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted

comments may be inspected at the same location during regular business hours.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling relating to the showing of intent of actual use under Section 10.134 of the Customs Regulations. Although in this notice Customs is specifically referring to one ruling, *HQ* 961431, this notice covers any rulings on this issue which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the issue subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identi-

cal transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In *HQ* 961431, a protest review decision issued to the Port Director of Customs, Chicago, on December 1, 1998, it was held that protestant's failure to file a declaration of intended use with the consumption entry, as required by section 10.134, Customs Regulations (19 CFR 10.134), was not fatal to an actual use claim under heading 9817.00.60, HTSUS. This ruling was based on the belief that the required declaration could be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation became final, in accordance with section 10.112 of the Customs Regulations (19 CFR 10.112). *HQ* 961431 is set forth as "Attachment A" to this document.

It is now Customs position that failure to file the required declaration of intended use at the time of importation constitutes noncompliance with section 10.134 of the Customs Regulations, and will defeat a claim under an actual use provision. Pursuant to 19 U.S.C. 1625(c)(1)), Customs intends to revoke *HQ* 961431 and any other ruling not specifically identified to reflect Customs position in the matter pursuant to the analysis in *HQ* 965354, which is set forth as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: December 21, 2001.

JOHN DURANT,
Director,
Commercial Rulings Division.

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 1, 1998.

CLA–2 RR:CR:GC 961431 JAS
Category: Classification
Tariff No. 8408.20.90 and 9817.00.60

PORT DIRECTOR OF CUSTOMS
610 S. Canal Street
Chicago, IL 60607–4523

Re: PRD 3901–97–102069; Internal Combustion Engines for Use With Agricultural Machinery; Internal Combustion Piston Engines; Heading 9817.00.60, Parts to be Used in Agricultural Machines and Implements, Actual Use; Sections 10.112, 10.131–10.139, Customs Regulations; Chapter 98, U.S. Note 1.

DEAR PORT DIRECTOR:

This is our decision on Protest 3901–97–102069, filed against your classification under the Harmonized Tariff Schedule of the United States (HTSUS), of certain internal combustion piston type engines. The entries under protest were liquidated on May 9, 1997, and this protest timely filed on August 7, 1997.

Facts:

The Customs Form 6445 identifies the M65M13 Engine Assembly and the M65M08 Engine EP0408. These are internal combustion piston engines described in the commercial invoice as being for use with agricultural tractors and other agricultural machinery and implements. They were consigned and delivered to a production facility that manufactures agricultural machinery.

The engines were entered under a provision in HTS heading 8408 for internal combustion piston engines. The entries were liquidated, dutiable, under the entered provision. The protestant now maintains the goods should have been entered free of duty under HTS heading 9817.00.60, a provision for parts to be used in articles provided for in headings 8432, 8433, 8434, and 8436. These provisions describe agricultural or horticultural machinery of various kinds.

The provisions under consideration are as follows:

8408	Compression-ignition internal combustion piston engines (diesel or semi-diesel engines):
8408.20	Engines of a kind used for the propulsion of vehicles of chapter 87:
8408.20.90	Other
8408.90	Other engines:
8408.90.10	To be installed in agricultural or horticultural machinery or equipment
8408.90.90	Other
* * * * * * *	
9817.00.60	Parts to be used in articles provided for in headings 8432, 8433, 8434 and 8436 * * *

Issue:

Whether the engines under protest are eligible for free entry under heading 9817.00.60.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Heading 9817.00.60, HTSUS, is a duty-free provision for parts of machinery, equipment and implements to be used for agricultural or horticultural purposes. The provisions of Chapter 98 are not subject to the rule of relative specificity in GRI 3(a). Any article described in a provision of Chapter 98 is classifiable in that provision if the conditions and requirements thereof and of any applicable regulations are met. *See* Chapter 98, U.S. Note

1, HTSUS. The internal combustion engines in issue are not within the exclusions from heading 9817.00.60 listed in Chapter 98, Subchapter XVII, U.S. Note 2, HTSUS. Their stated use is in a legitimate agricultural or horticultural pursuit. However, there must be compliance with the actual use regulations in sections 10.131 through and including 10.139 of the Customs Regulations (19 C.F.R. §10.131–10.139). Section 10.133(a), Customs Regulations, requires as one condition of free entry under an actual use provision that such use be intended at the time of importation. Section 10.134, Customs Regulations, states, in relevant part, that the showing of intent as to actual use shall be made by filing with the consumption entry a declaration of intended use *or* by entering the proper subheading of an HTS actual use provision on the entry form.

An examination of the entries under protest indicates that the appropriate subheading which would have indicated intent as to actual use is 8408.90.10, HTSUS, whereas the entry summary indicates the engines were entered under subheading 8408.90.90, HTSUS, as other compression-ignition internal combustion piston engines. A declaration of intent was filed, but it is dated February 26, 1997, twenty one days after the February 5, 1997, date of the entry summary. This is insufficient proof of the required intent at the time of importation. However, section 10.112, Customs Regulations, states, in relevant part, that any free entry or a reduced duty document, form, or statement required to be filed in connection with the entry may be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation becomes final. Therefore, protestant's failure to file the declaration required by section 10.134, Customs Regulations, with the entries is not fatal to the claim under heading 9817.00.60, HTSUS, provided there is compliance with the actual use requirements in section 10.133, Customs Regulations.

We note that the February 26, 1997, declaration specifically refers to engines used in windrowers classifiable in subheading 8433.30.00, HTSUS, in combines classifiable in subheading 8433.51.00, HTSUS, and in bale wagons classifiable in subheading 8716.20.00, HTSUS. Thus, a claim for duty-free entry under heading 9817.00.60 cannot be sustained for engines to be used in bale wagons of heading 8716, as this heading is not among those listed in heading 9817.00.60.

Holding:

Under the authority of GRI 1, the compression-ignition internal combustion piston engines in issue to be used in windrowers and in combines are provided for in heading 9817. They are classifiable in subheading 9817.00.60, HTSUS. The protest should be ALLOWED with respect to these engines, upon satisfactory compliance with the actual use requirements in section 10.133, Customs Regulations.

The compression-ignition internal combustion piston engines in issue to be used in bale wagons are provided for in heading 8408. They are classifiable in subheading 8408.20.90, HTSUS. Since the rate of duty under this provision is higher than the liquidated rate, the protest should be DENIED as to these engines.

In accordance with Section 3A(11)(b) of Customs Directive 099 3550–065, dated August 4, 1993, Subject: Revised Protest Directive, you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry or entries in accordance with the decision must be accomplished prior to mailing the decision. Sixty days from the date of the decision the Office of Regulations and Rulings will make the decision available to Customs personnel, and to the public on the Customs Home Page on the World Wide Web at www.customs. ustreas.gov, by means of the Freedom of Information Act, and other methods of public distribution.

PAUL G. HEGLAND,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

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

CLA–2 RR:CR:GC 965354 JAS
Category: Classification
Tariff No. None

TOWER GROUP INTERNATIONAL
6730 Middlebelt Road
Romulus, MI 48174–2039

Re: *HQ* 961431 Revoked; Declaration of Intended Use Under Actual Use Provision.

DEAR SIRS:

In *HQ* 961431, a decision on Protest 3901–97–102069, issued to the Port Director of Customs, Chicago, on December 1, 1998, in connection with an importation by New Holland North America, Inc., internal combustion engines for use with agricultural machinery were held to be classifiable in a conditionally free provision of heading 9817, Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered the decision with respect to this merchandise and concluded that it is incorrect. However, certain of the internal combustion engines for use in agricultural bale wagons were found to be classifiable as other engines, in subheading 8408.20.90, HTSUS. This classification remains intact. However, since *HQ* 961431 was a protest review decision, liquidation of the entries in the protest will be undisturbed.

Facts:

The merchandise in *HQ* 961431, internal combustion engines for use with agricultural machinery, was entered under a provision in heading 8408, Harmonized Tariff Schedule of the United States (HTSUS), as other internal combustion engines. The entries were liquidated dutiable under this provision. On protest, a claim was made under heading 9817.00.60, HTSUS, as parts to be used in articles provided for in headings 8432, 8433, 8434 and 8436. The claim is based on the fact that the commercial invoice and bill of lading indicate that the engines were intended for use in agricultural implements. The record reflects that the declaration of intended use required to support a claim under heading 9817 was not filed with the entry summary but rather, twenty one days thereafter.

Issue:

Whether a declaration of intended use submitted after the consumption entry is filed is sufficient proof of required intent under an actual use provision.

Law and Analysis:

The engines were entered under subheading 8408.90.90, HTSUS, as other compression-ignition internal combustion piston engines (diesel or semi-diesel engines), and the entries liquidated dutiable. The claim on protest is under heading 9817.00.60, HTSUS, as parts to be used in articles provided for in headings 8432, 8433, 8434 and 8436. This is a duty-free provision for parts of machinery, equipment and implements to be used for agricultural or horticultural purposes.

As indicated in *HQ* 961431, the stated use of the engines is in a legitimate agricultural or horticultural pursuit. However, there must be compliance with the actual use regulations in sections 10.131 through and including 10.139 of the Customs Regulations (19 CFR 10.131–10.139). Section 10.134, Customs Regulations, states, in relevant part, that the showing of intent as to actual use, such intent being manifested at the time of importation as required by section 10.133(a), shall be made by filing with the consumption entry a declaration of intended use *or* by entering the proper subheading of an HTS actual use provision on the entry form. The record in this case shows that a declaration of intent was filed twenty one days after the date of the entry summary.

HQ 961431 concluded that protestant's failure to file the declaration required by section 10.134, Customs Regulations, with the entries is not fatal to the claim under heading 9817.00.60, HTSUS, because under section 10.112, Customs Regulations, the declaration of intended use may be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation becomes final. This is incorrect and no longer represents Customs position in the circumstances. It is clear from section 10.133 of the Customs Reg-

ulations that with respect to a claim under an actual use provision such use must be *intended at the time of importation*. It is likewise clear from section10.134 that one method of showing the required intent is by filing a declaration of intended use *with the consumption entry or entries*. Failure to file the required declaration with the entry or entries indicates noncompliance with section 10.133. This noncompliance is not curable under section 10.112 as this provision relates merely to the late filing of documents.

Holding:

Failure to file a declaration of intended use under an actual use provision with the consumption entry of entries indicates noncompliance with section 10.133, Customs Regulations, and is not curable under section 10.112, Customs Regulations. In these circumstances, a claim under heading 9817.00.60, HTSUS, is not sustainable.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF CRIB SAFETY TENTS

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

ACTION: Notice of proposed revocation of three tariff classification ruling letters and treatment relating to the classification of crib safety tents.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke HQ 960934, dated September 30, 1997; HQ 960933, dated September 30, 1997; and HQ 959262, dated May 6, 1997, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of crib safety tents. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before February 8, 2002.

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

FOR FURTHER INFORMATION CONTACT: Beth Safeer, Textiles Branch: (202) 927–1342.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke three ruling letters relating to the tariff classification of crib safety tents. Although in this notice Customs is specifically referring to the revocation of HQ 960934 (Attachment A), HQ 960933 (Attachment B) and HQ 959262 (Attachment C), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

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

Customs previously classified crib safety tents under subheading 9403.90.6000, HTSUSA, which provides for "Other furniture and parts

thereof: Parts: Other: Of textile material, except cotton." Based on our analysis of the scope of the terms of the heading to 9403, HTSUSA, and heading 6304, HTSUSA, the Legal Notes, and the Explanatory Notes, the crib safety tents of the type discussed herein, are classifiable in subheading 6304.91.0040, HTSUSA, which provides for "Other furnishing articles, excluding those of heading 9404; Other Knitted or crocheted: Of man-made fibers." Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke HQ 960934 (Attachment A): HQ 960933 (Attachment B) and HQ 959262 (Attachment C) to reflect the proper classification of the merchandise pursuant to the analysis set forth in the proposed ruling letters: HQ 965257 (Attachment D); HQ 965258 (Attachment E) and HQ 965259 (Attachment F). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: December 18, 2001.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 30, 1997.

CLA–2 RR:TC:TE 960934 GGD
Category: Classification
Tariff No. 9403.90.6000

MR. JOHN F. COWEN
PHILIP T. COWEN CUSTOMHOUSE BROKERS
1918 East Elizabeth
Brownsville, TX 78520

DEAR MR. COWEN:

In Headquarters Ruling Letter (HQ) 087844, issued November 30, 1990, you were advised on behalf of your client, Tots in Mind, Inc., that a crib safety tent was classified in subheading 6304.91.0040, HTSUSA, textile category 666, the provision for "Other furnishing articles, excluding those of heading 9404: Other: Knitted or crocheted, Of man-made fibers." In HQ 088553, issued November 6, 1991, that ruling was affirmed.

In Bauerhin Technologies Limited Partnership and John V. Carr & Son, Inc. v. United States (hereinafter Bauerhin), 914 F. Supp. 554, Slip Op. 95–206 (1995 Ct. Intl. Trade), aff'd, Slip Op. 96–1275 and Slip Op. 96–1276, decided April 2, 1997, the Court of International Trade (CIT) held, and the Court of Appeals for the Federal Circuit (CAFC) affirmed, that textile canopies designed for use with child automobile safety seats were classified as parts of the car seats for which they were designed under heading 9401, HTSUS.

This letter is to advise you that, in HQ 959262, issued May 6, 1997, copy attached, this office followed the rationale of the CIT and CAFC in Bauerhin, and classified similar mer-

chandise—a "Cozy Crib Tent"—in subheading 9403.90.6000, HTSUSA, the provision for "Other furniture and parts thereof: Parts: Other: Of textile material, except cotton," with a general column one rate of duty of 2.8 percent ad valorem. We find that the crib safety tent subject to HQ 087844 and HQ 088553, is classified in subheading 9403.90.6000, HTSUSA, and by operation of law, the Bauerhin case revoked the two referenced rulings.

Under the Customs Modernization provisions of the NAFTA Implementation Act, it is the responsibility of the importer to classify and appraise merchandise. The U.S. Customs Service, although under no obligation to inform you of the foregoing, is in the spirit of informed compliance notifying you of the consequences of the Bauerhin case. This letter and attachment should be brought to the attention of Customs when entry is made for your merchandise, either by referencing this ruling letter and attachment or by providing a copy.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 30, 1997.

CLA–2 RR:TC:TE 960933 GGD
Category: Classification
Tariff No. 9403.90.6000

MICHAEL MANZI, ESQUIRE
59 Jackson Street
Lawrence, MA 01840–1624

DEAR MR. MANZI:

In Headquarters Ruling Letter (HQ) 088553, issued November 6, 1991, you were advised on behalf of your client, Tots in Mind, Inc., that HQ 087844, dated November 30, 1990, was affirmed. Both rulings had concerned the classification of a crib safety tent in subheading 6304.91.0040, HTSUSA, textile category 666, the provision for "Other furnishing articles, excluding those of heading 9404: Other: Knitted or crocheted, Of manmade fibers."

In Bauerhin Technologies Limited Partnership and John V. Carr & Son, Inc. v. United States (hereinafter Bauerhin), 914 F. Supp. 554, Slip Op. 95–206 (1995 Ct. Intl. Trade), aff'd, Slip Op. 96–1275 and Slip Op. 96–1276, decided April 2, 1997, the Court of International Trade (CIT) held, and the Court of Appeals for the Federal Circuit (CAFC) affirmed, that textile canopies designed for use with child automobile safety seats were classified as parts of the car seats for which they were designed under heading 9401, HTSUS.

This letter is to advise you that, in HQ 959262, issued May 6, 1997, copy attached, this office followed the rationale of the CIT and CAFC in Bauerhin, and classified similar merchandise—a "Cozy Crib Tent"—in subheading 9403.90.6000, HTSUSA, the provision for "Other furniture and parts thereof: Parts: Other: Of textile material, except cotton," with a general column one rate of duty of 2.8 percent ad valorem. We find that the crib safety tent subject to HQ 087844 and HQ 088553, is classified in subheading 9403.90.6000, HTSUSA, and by operation of law, the Bauerhin case revoked the two referenced rulings.

Under the Customs Modernization provisions of the NAFTA Implementation Act, it is the responsibility of the importer to classify and appraise merchandise. The U.S. Customs Service, although under no obligation to inform you of the foregoing, is in the spirit of informed compliance notifying you of the consequences of the Bauerhin case. This letter and attachment should be brought to the attention of Customs when entry is made for your merchandise, either by referencing this ruling letter and attachment or by providing a copy.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 6, 1997.

CLA–2 RR:TC:TE 959262 GGD
Category: Classification
Tariff No. 9403.90.6000

MR. JEFFREY A. RENAUT
A & A CUSTOMS BROKERS, LTD.
425 Medford Street
Charlestown Marine Industrial Park
Charlestown, MA 02129

Re: "Cozy Crib Tent;" Parts of Furniture; Not Tent; Not Other Furnishing Article; HQ 088553; HQ 087844; Bauerhin Technologies Limited Partnership and John V. Carr & Son, Inc. v. United States, 914 F. Supp. 554, Slip Op. 95–206 (1995 Ct. Intl. Trade), aff'd, Slip Op. 96–1275, Slip Op. 96–1276, Decided April 2, 1997.

DEAR MR. RENAUT:

This letter is in response to your request of May 3, 1996, on behalf of your client, Tots in Mind, Inc., concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a crib tent manufactured in Taiwan. A sample was submitted with your request.

Facts:

The sample, identified as a "Cozy Crib Tent," style number 1000, is designed for attachment to and over a crib to prevent injuries that might otherwise occur when a child attempts to climb out of a crib. The item's upper portion is composed of knit mesh net material and the sides are composed of woven nylon material. The crib tent is attached to a crib by means of polyester cord ties and straps with hook and loop type fabric fasteners. The article is given shape with the support of fiberglass rods, which connect in pairs and slide through sleeves. There are sleeves that cross diagonally over the center of the material, and two sleeves located at the bottoms of the two longest sides. When the sleeved rods are inserted into rod pockets at the item's corners, the center of the material becomes the top of a domed enclosure. There also is a long zipper closure, the pull tab of which may be placed in a pocket that is inaccessible to the child.

Issue:

Whether the merchandise is classified in heading 6304, HTSUS, as other furnishing articles; or in heading 9403, HTSUS, as parts of furniture, of textile material.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Customs has previously classified similar goods as other furnishing articles. In Headquarters Ruling Letter (HQ) 087844, issued November 30, 1990, this office held that a crib safety tent substantially similar to the instant merchandise was classified in subheading 6304.91.0040, HTSUSA, textile category 666, the provision for "Other furnishing articles, excluding those of heading 9404: Other: Knitted or crocheted, Of man-made fibers." It was found that, since the article had not been designed to provide shelter, classification of the item as a tent in heading 6306, HTSUS, would be inappropriate.

In HQ 088553, issued November 6, 1991, we reconsidered HQ 087844, with respect to whether the crib safety tent would be more properly classified in heading 6307, as an other made up textile article, than in heading 6304, HTSUS. HQ 087844 was affirmed, however, and the crib safety tent remained classified within heading 6304, HTSUS.

The classification of similarly designed merchandise—cloth canopies intended for use with infant car seats—was examined by the Court of International Trade (CIT) in Bauerhin Technologies Limited Partnership and John V. Carr & Son, Inc. v. United States (hereinafter Bauerhin), 914 F. Supp. 554, Slip Op. 95–206 (1995 Ct. Intl. Trade), aff'd, Slip Op. 96–1275 and Slip Op. 96–1276, decided April 2, 1997. At issue was whether the canopies should be classified as other made up textile articles under heading 6307, or as parts of the car seats for which they were designed under heading 9401, HTSUS. The CIT found that, although the canopies were not necessary to the operation of the baby seats to which they would attach, they satisfied a specific and integral need associated with the use of the seats. Because the canopies had no use other than as a seat attachments, the Court found them to be parts of automobile seats. Bauerhin, 914 F. Supp. at 563. The CIT reversed Customs classification of the canopies under subheading 6307.90.94, and ordered that the entry be reliquidated under subheading 9401.90.10, HTSUSA. The Government appealed.

In affirming the holding of the CIT, the Court of Appeals for the Federal Circuit (CAFC) noted that the Government had based its contention that the canopies were not properly considered "parts," on the rule established in United States v. Willoughby Camera Stores, Inc. (hereinafter Willoughby), 21 C.C.P.A. 322 (1933), in which the Court had stated that a part "is an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article." Id. at 324. The CAFC disagreed with the Government's assertion that, because the canopies were not directly related to the restraint function of the infant car seats, they could not be parts of the car seats. The Court pointed out that Willoughby had dealt with an imported tripod that was not solely used with cameras and that had various other purposes. Since the canopies served no function or purpose independent of the child safety seats, and were designed, marketed, and sold to be attached thereto, the CAFC found that the Bauerhin facts bore a closer resemblance to those of United States v. Pompeo (hereinafter Pompeo), 43 C.C.P.A. 9 (1955).

In Pompeo, the issue was whether an imported supercharger was properly considered a part of an automobile. The Government had argued that, because an automobile was able to function with or without it, the supercharger was not a part. The Court disagreed, focusing on the nature of the supercharger, which was "dedicated irrevocably for use upon automobiles." The Court held that the article was properly classified as a part of an automobile. Id. at 13.

Since the Bauerhin canopies were dedicated solely for use with child safety seats, and were neither designed nor sold to be used independently, the CAFC concluded that the CIT had not erred in determining that the merchandise was properly classified as parts of seats. Following the CIT's and the CAFC's Bauerhin rationale in this case, we find that the "Cozy Crib Tent" serves no function or purpose independent of a crib, for which it is designed, marketed, and sold to be attached. The merchandise is therefore properly classified in heading 9403, HTSUS, as a textile part of furniture.

Holding:

The article identified as a "Cozy Crib Tent," style no. 1000, is classified in subheading 9403.90.6000, HTSUSA, the provision for "Other furniture and parts thereof: Parts: Other: Of textile material, except cotton." The general column one rate of duty is 2.8 percent ad valorem.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT D]

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

CLA–2 RR:CR:TE 965257 BAS
Category: Classification
Tariff No. 6304.91.0040

MR. JEFFREY RENAUT
A & A CUSTOMS BROKERS, LTD.
425 Medford Street
Charlestown Marine Industrial Park
Charlestown, MA 02129

Re: Revocation of HQ 959262, May 6, 1997; Classification of "Cozy Crib Tent".

DEAR MR. RENAULT:

This is in reference to Headquarters Ruling Letter (HQ) 959262 issued to you on May 6, 1997, in response to your letter of May 3, 1996 to the U.S. Customs Service, Office of Regulations and Rulings on behalf of your client, Tots in Mind, Inc., requesting a ruling on the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a crib tent.

In HQ 959262, a crib tent was classified in subheading 9403.90.6000, HTSUSA, which provides for "Other furniture and parts thereof: Parts: Other: Of textile material, except cotton." We have now had occasion to review that decision and found it to be in error insofar as the classification of the crib tent is concerned. This ruling letter revokes HQ 959262.

Facts:

The merchandise under consideration is a crib safety tent. The crib tent identified as a "Cozy Crib Tent," style number 1000, is described as an attachment to and over a crib to prevent injuries that might otherwise occur when a child attempts to climb out of a crib. The item's upper portion is composed of knit mesh net material and the sides are composed of woven nylon material. The crib tent is attached to a crib by means of polyester cord ties and straps with hook and loop type fabric fasteners. The article is given shape with the support of fiberglass rods, which connect in pairs and slide through sleeves. There are sleeves that cross diagonally over the center of the material, and two sleeves located at the bottoms of the two longest sides. When the sleeved rods are inserted into rod pockets at the item's corners, the center of the material becomes the top of a domed enclosure. There also is a long zipper closure, the pull tab of which may be placed in a pocket that is inaccessible to the child.

Issue:

Whether the crib tent is properly classifiable heading 9403, HTSUSA, which provides for other furniture and parts thereof or in heading 6304, HTSUSA, as an other furnishing article?

Law and Analysis:

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

The crib safety tent is potentially classifiable in two HTSUSA headings. One possible heading is 9403, HTSUSA, which provides for other furniture and parts thereof. The other possible heading is 6304, HTSUSA, which provides for other furnishing articles, excluding those of heading 9404, HTSUSA.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9403, HTSUSA, includes "Other furniture and parts thereof." The subheadings include *inter alia* metal, wooden, plastic and bamboo furniture. The ENs to heading 9403 state that the heading covers furniture and parts thereof, **not covered** by the previous headings. It includes *inter alia* furniture for general use (e.g. cupboards, show-cases, tables, telephone stands, writing desk, escritoires, book-cases, and other shelved furniture), and also furniture for special uses. Other examples listed include folding beds, playpens, cabinets, bread chests, wardrobes, clothes lockers, card index files, school desks, laboratory benches, drawer cupboards etc. While a crib is similar to the items listed in the exemplars to heading 9403, HTSUSA, the crib tent is an accessory to the crib rather than a part of the crib.

In *Bauerhin Technologies Limited Partnership v. United States*, 110 F.3d 774, 1997 U.S. App. LEXIS 6214, (CAFC 1997), the Court addressed the issue of whether or not a canopy designed to fit over a child automobile safety seat which was imported separately and sold as part of the seat to which it was attached was a "part" of the child safety seat for classification purposes. The Court held that because the canopy was dedicated for use with the car seat it was properly considered a "part" under the HTSUSA and therefore classifiable in subheading 9403.90.8080, HTSUSA, which provides for other furniture and parts thereof: parts; other: other, other.

Notably, in *Bauerhin* the canopies that were classified as **parts** of car seats were specially designed to fit over child automobile safety seats. **[Emphasis added].** Although the canopies were imported separately from the seats with which they were to be used, they were sold as parts of the seats to which they were to be attached. In contrast, the Cozy Crib Tent at issue is not sold as part of the crib to which it attaches. The Cozy Crib Tent is an optional item that is sold separately. While the canopy discussed in *Bauerhin* is designed to fit a particular car seat, the Cozy Crib Tent could be used with any crib. Thus the *Bauerhin* rationale does not extend to the instant merchandise. Accordingly, the crib safety tent is not properly classified as a part of furniture in heading 9403, HTSUSA.

Heading 6304, HTSUSA

Having determined that the crib safety tent is not properly classifiable as a part of furniture under heading 9403, HTSUSA, we must now determine whether or not the crib safety tent is properly classifiable in Heading 6304, HTSUSA, as an other furnishing article. Heading 6304, HTSUSA, provides for "Other furnishing articles excluding those of heading 9404."

According to *Merriam Webster's Deluxe Dictionary at 746 (10th Collegiate Edition*, The Readers Digest Association, Inc., 1998) a furnishing is "an object that tends to increase comfort or utility." The crib tent is an article that would increase both comfort and utility. The crib tent increases the parents' comfort level knowing that it will keep the child from climbing out or falling out of the crib. Thus, it increases the utility of the crib. Knowing that the child is safe within the crib, the parents may use the crib as a place to put the child while they are focusing on another task, thereby increasing the crib's utility.

The exemplars listed in the ENs to heading 6304, HTSUSA include *inter alia* wall hangings and textile furnishings for ceremonies, mosquito nets and bedspreads, cushion covers, loose covers for furniture, table covers and antimacassars. Many of these exemplars are united by the fact that they serve a protective or decorative function. Wall hangings, textile furnishings and cushion covers all form part of a room's décor. Other exemplars listed in the ENs serve a protective function in addition to a decorative function. That is, they protect either people (the mosquito nets) or furniture (loose covers for furniture or table covers). The subject merchandise is similar to the mosquito netting in that both are composed of net material and both serve to protect persons. Mosquito netting protects people from harmful insect bites as the crib tent protects babies from harmful falls and potential injuries. Mosquito netting, draped over a bed, may also serve a decorative function. Accordingly, the crib safety tent is "ejusdem generis" or "of the same kind" of merchandise as the exemplars listed in heading 6304, HTSUSA.

Holding:

The "Cozy Crib Tent," composed of knit mesh material and woven nylon material is properly classified in subheading 6304.91.0040, HTSUSA which provides for "Other furnishing articles, excluding those of heading 9404: Other: Knitted or crocheted, Of manmade fibers." The general column one rate of duty is 7.5 percent *ad valorem*. The textile quota category applicable to this provision is 666.

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

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

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

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

CLA–2 RR:CR:TE 965258 BAS
Category: Classification
Tariff No. 6304.91.0040

MR. JOHN F. COWEN
PHILIP T. COWEN CUSTOMHOUSE BROKERS
1918 East Elizabeth
Brownsville, TX 78520

Re: Revocation of HQ 960934, September 30, 1997; Classification of a crib safety tent.

DEAR MR. COWEN:

This is in reference to Headquarters Ruling Letter (HQ) 960934 issued to you on September 30, 1997, in which you were informed that HQ 088553, dated November 6, 1991 and HQ 087844, dated November 30, 1990, which concerned your client Tots In Mind, Inc., had been revoked by operation of law. The aforementioned rulings concern the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a crib tent.

As a result of *Bauerhin Technologies Limited Partnership v. United States*, 110 F.3d 774, 1997 U.S. App. LEXIS 6214, (CAFC 1997), you were informed that HQ 087844 and HQ 088553 were revoked by operation of law. Accordingly, in HQ 960934, dated September 30, 1997, we found that a crib tent was classified in subheading 9403.90.6000, HTSUSA, which provides for "Other furniture and parts thereof: Parts: Other: Of textile material, except cotton." We have now had occasion to review that decision and found it to be in error. This ruling letter revokes HQ 960934, dated September 30, 1997.

Facts:

The merchandise under consideration is a crib safety tent. The crib tent identified as a "Cozy Crib Tent" is described as an attachment to and over a crib to prevent injuries that might otherwise occur when a child attempts to climb out of a crib. The item's upper portion is composed of knit mesh net material and the sides are composed of woven nylon material. The crib tent is attached to a crib by means of polyester cord ties and straps with hook and loop type fabric fasteners. There is a plastic zipper opening on the front that keeps the child safely in the crib. The framing is made of fiberglass rods with metal attachments.

Issue:

Whether the crib tent is properly classifiable in heading 9403, HTSUSA, which provides for other furniture and parts thereof or in heading 6304, HTSUSA, as an other furnishing article?

Law and Analysis:

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

The crib safety tent is potentially classifiable in two HTSUSA headings. One possible heading is 9403, HTSUSA, which provides for other furniture and parts thereof. The other possible heading is heading 6304, HTSUSA, which provides for other furnishing articles, excluding those of heading 9404, HTSUSA.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9403, HTSUSA, includes "Other furniture and parts thereof." The subheadings include *inter alia* metal, wooden, plastic and bamboo furniture. The ENs to heading 9403 state that the heading covers furniture and parts thereof, **not covered** by the previous headings. It includes *inter alia* furniture for general use (e.g. cupboards, show-cases, tables, telephone stands, writing desk, escritoires, book-cases, and other shelved furniture), and also furniture for special uses. Other examples listed include folding beds, playpens, cabinets, bread chests, wardrobes, clothes lockers, card index files, school desks, laboratory benches, drawer cupboards etc. While a crib is similar to the items listed in the exemplars to heading 9403, HTSUSA, the crib tent is an accessory to the crib rather than a part of the crib.

In *Bauerhin Technologies Limited Partnership v. United States*, 110 F.3d 774, 1997 U.S. App. LEXIS 6214, (CAFC 1997), the Court addressed the issue of whether or not a canopy designed to fit over a child automobile safety seat which was imported separately and sold as part of the seat to which it was attached was a "part" of the child safety seat for classification purposes. The Court held that because the canopy was dedicated for use with the car seat it was properly considered a "part" under the HTSUSA and therefore classifiable in subheading 9403.90.8080, HTSUSA, which provides for other furniture and parts thereof: parts; other: other, other.

Notably, in *Bauerhin* the canopies that were classified as **parts** of car seats were specially designed to fit over child automobile safety seats. **[Emphasis added].** Although the canopies were imported separately from the seats with which they were to be used, they were sold as parts of the seats to which they were attached. In contrast, the Cozy Crib Tent at issue is not sold as part of the crib to which it attaches. The Cozy Crib Tent is an optional item that is sold separately. While the canopy discussed in *Bauerhin* is designed to fit a particular car seat, the Cozy Crib Tent could be used with any crib. Thus the *Bauerhin* rationale does not extend to the instant merchandise. Accordingly, the crib safety tent is not properly classified as a part of furniture in heading 9403, HTSUSA.

Heading 6304, HTSUSA

Having determined that the crib safety tent is not properly classifiable as a part of furniture under heading 9403, HTSUSA, we must now determine whether or not the crib safety tent is properly classifiable in Heading 6304, HTSUSA, as an other furnishing article. Heading 6304, HTSUSA, provides for "Other furnishing articles excluding those of heading 9404."

According to *Merriam Webster's Deluxe Dictionary 10th Collegiate Edition*, The Readers Digest Association, Inc., 1998 at 746, a furnishing is "an object that tends to increase comfort or utility." The crib tent is an article that would increase both comfort and utility. The crib tent increases the parents' comfort level knowing that it will keep the child from climbing out or falling out of the crib. Thus, it increases the utility of the crib. Knowing

that the child is safe within the crib, the parents may use the crib as a place to put the child while they are focusing on another task, thereby increasing the crib's utility.

The exemplars listed in the ENs to heading 6304, HTSUSA include *inter alia* wall hangings and textile furnishings for ceremonies, mosquito nets and bedspreads, cushion covers, loose covers for furniture, table covers and antimacassars. Many of these exemplars are united by the fact that they serve a protective or decorative function. Wall hangings, textile furnishings and cushion covers all form part of a room's décor. Other exemplars listed in the ENs serve a protective function in addition to a decorative function. That is, they protect either people (the mosquito nets) or furniture (loose covers for furniture or table covers). The subject merchandise is similar to the mosquito netting in that both are composed of net material and both serve to protect persons. Mosquito netting protects people from harmful insect bites as the crib tent protects babies from harmful falls and potential injuries. Mosquito netting, draped over a bed, may also serve a decorative function. Accordingly, the crib safety tent is "ejusdem generis" or "of the same kind" of merchandise as the exemplars listed in heading 6304, HTSUSA.

Holding:

The "Cozy Crib Tent," composed of knit mesh material and woven nylon material is properly classified in subheading 6304.91.0040, HTSUSA which provides for "Other furnishing articles, excluding those of heading 9404: Other: Knitted or crocheted, Of manmade fibers." The general column one rate of duty is 7.5 percent *ad valorem*. The textile quota category applicable to this provision is 666.

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

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

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

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

CLA–2 RR:CR:TE 965259 BAS
Category: Classification
Tariff No. 6304.91.0040

MR. MICHAEL MANZI, ESQUIRE
59 Jackson Street
Lawrence, MA 01840–1624

Re: Revocation of HQ 960933, September 30, 1997; Classification of a crib safety tent.

DEAR MR. MANZI:

This is in reference to Headquarters Ruling Letter (HQ) 960933 issued to you on September 30, 1997 in which you were informed that HQ 088553, dated November 6, 1991 and HQ 087844, dated November 30, 1990, which concerned your client Tots In Mind,

Inc., had been revoked by operation of law. The aforementioned rulings concern the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a crib tent.

As a result of *Bauerhin Technologies Limited Partnership v. United States*, 110 F.3d 774, 1997 U.S. App. LEXIS 6214, (CAFC 1997), you were informed that HQ 087844 and HQ 088553 were revoked by operation of law. Accordingly, in HQ 960933, dated September 30, 1997, we found that a crib tent was classified in subheading 9403.90.6000, HTSUSA, which provides for "Other furniture and parts thereof: Parts: Other: Of textile material, except cotton." We have now had occasion to review that decision and found it to be in error. This ruling letter revokes HQ 960933, dated September 30, 1997.

Facts:

The merchandise under consideration is a crib safety tent. The crib tent identified as a "Cozy Crib Tent" is described as an attachment to and over a crib to prevent injuries that might otherwise occur when a child attempts to climb out of a crib. The item's upper portion is composed of knit mesh net material and the sides are composed of woven nylon material. The crib tent is attached to a crib by means of polyester cord ties and straps with hook and loop type fabric fasteners. There is a plastic zipper opening on the front that keeps the child safely in the crib. The framing is made of fiberglass rods with metal attachments.

Issue:

Whether the crib tent is properly classifiable in heading 9403, HTSUSA, which provides for other furniture and parts thereof or in heading 6304 HTSUSA, as an other furnishing article?

Law and Analysis:

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

The crib safety tent is potentially classifiable in two HTSUSA headings. One possible heading is 9403, HTSUSA, which provides for other furniture and parts thereof. The other possible heading is heading 6304, HTSUSA, which provides for other furnishing articles, excluding those of heading 9404, HTSUSA.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 9403, HTSUSA, includes "Other furniture and parts thereof." The subheadings include *inter alia* metal, wooden, plastic and bamboo furniture. The ENs to heading 9403 state that the heading covers furniture and parts thereof, **not covered** by the previous headings. It includes *inter alia* furniture for general use (e.g. cupboards, show-cases, tables, telephone stands, writing desk, escritoires, book-cases, and other shelved furniture), and also furniture for special uses. Other examples listed include folding beds, playpens, cabinets, bread chests, wardrobes, clothes lockers, card index files, school desks, laboratory benches, drawer cupboards etc. While a crib is similar to the items listed in the exemplars to heading 9403, HTSUSA, the crib tent is an accessory to the crib rather than a part of the crib.

In *Bauerhin Technologies Limited Partnership v. United States*, 110 F.3d 774, 1997 U.S. App. LEXIS 6214, (CAFC 1997), the Court addressed the issue of whether or not a canopy designed to fit over a child automobile safety seat which was imported separately and sold as part of the seat to which it was attached was a "part" of the child safety seat for classification purposes. The Court held that because the canopy was dedicated for use with the car seat it was properly considered a "part" under the HTSUSA and therefore classifiable in subheading 9403.90.8080, HTSUSA, which provides for other furniture and parts thereof: parts; other: other, other.

Notably, in *Bauerhin* the canopies that were classified as **parts** of car seats were specially designed to fit over child automobile safety seats. **[Emphasis added].** Although the

canopies were imported separately from the seats with which they were to be used, they were sold as parts of the seats to which they were attached. In contrast, the Cozy Crib Tent at issue is not sold as part of the crib to which it attaches. The Cozy Crib Tent is an optional item that is sold separately. While the canopy discussed in *Bauerhin* is designed to fit a particular car seat, the Cozy Crib Tent could be used with any crib. Thus the *Bauerhin* rationale does not extend to the instant merchandise. Accordingly, the crib safety tent is not properly classified as a part of furniture in heading 9403, HTSUSA.

Heading 6304, HTSUSA

Having determined that the crib safety tent is not properly classifiable as a part of furniture under heading 9403, HTSUSA, we must now determine whether or not the crib safety tent is properly classifiable in Heading 6304, HTSUSA, as an other furnishing article. Heading 6304, HTSUSA, provides for "Other furnishing articles excluding those of heading 9404."

According to *Merriam Webster's Deluxe Dictionary (10th Collegiate Edition*, The Readers Digest Association, Inc., 1998 at 746, a furnishing is "an object that tends to increase comfort or utility." The crib tent is an article that would increase both comfort and utility. The crib tent increases the parents' comfort level knowing that it will keep the child from climbing out or falling out of the crib. Thus, it increases the utility of the crib. Knowing that the child is safe within the crib, the parents may use the crib as a place to put the child while they are focusing on another task, thereby increasing the crib's utility.

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Holding:

The "Cozy Crib Tent," composed of knit mesh material and woven nylon material is properly classified in subheading 6304.91.0040, HTSUSA which provides for "Other furnishing articles, excluding those of heading 9404: Other: Knitted or crocheted, Of manmade fibers." The general column one rate of duty is 7.5 percent *ad valorem*. The textile quota category applicable to this provision is 666.

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