U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 8–2002)

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

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of August 2002. The last notice was published in the CUSTOMS BULLETIN on September 4, 2002.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 572–8710.

Dated: September 13, 2002.

JOANNE ROMAN STUMP,
Chief,
Intellectual Property Rights Branch.

The list of recordations follow:

09/03/2002
10:27:38

U.S. CUSTOMS SERVICE
IPR RECORDATIONS ADDED IN AUGUST 2002

PAGE 1
DETAIL

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
COP0200157	20020815	20220815	PYTHON SNAKE SKIN	KATHRINE BAUMANN	N
COP0200158	20020815	20220815	MONEY BAG STAINED GLASS	KATHRINE BAUMANN	N
COP0200159	20020815	20220815	TROJAN HORSE	KATHRINE BAUMANN	N
COP0200160	20020815	20220815	SANTA CLAUS	KATHRINE BAUMANN	N
COP0200161	20020822	20220822	WARCRAFT III: REIGN OF CHAOS	BLIZZARD ENTERTAINMENT	N
COP0200162	20020822	20220822	DONKEY KONG COUNTRY	NINTENDO OF AMERICA INC.	N
COP0200163	20020827	20220827	LILO AND STITCH	DISNEY ENTERPRISES, INC.	N
COP0200164	20020827	20220827	MOBILE FIGHTER G-GUNDAM ACTION FIGURE PACKAGING	BANDAI ENTERTAINMENT INC.	N
COP0200165	20020827	20220827	MOBILE SUIT GUNDAM PACKAGING	BANDAI ENTERTAINMENT INC.	N
COP0200166	20020827	20220827	MOBILE SUIT GUNDAM CHAR'S COUNTER ATTACK PACKAGING	BANDAI ENTERTAINMENT INC.	N
COP0200167	20020828	20220828	BVLGARI CATALOG -- INSTITUTIONAL 2001	BULGARI S.P.A.	N
COP0200168	20020828	20220828	BVLGARI LEATHER, SILK & EYEWEAR COLLECTION ACCESSORIES	BULGARI S.P.A.	N
COP0200169	20020828	20220828	BVLGARI ACCESSORY COLLECTION-ACCESSORY SALES FOLDER	BULGARI S.P.A.	N
COP0200170	20020828	20220228	BVLGARI CATALOG - WATCHES 2001	BULGARI S.P.A.	N
COP0200171	20020828	20220228	BVLGARI CATALOG - WATCHES 2001	BULGARI S.P.A.	N
COP0200172	20020828	20220228	BVLGARI CATALOG -- JEWELRY 2001	BULGARI S.P.A.	N
COP0200173	20020828	20220828	BVLGARI - LUCEA	BULGARI S.P.A.	N
COP0200174	20020829	20220829	LEMON WEDGE	KATHRINE BAUMANN	N
COP0200175	20020829	20220829	LADYBUG SCULPTURE	KATHRINE BAUMANN	N
SUBTOTAL RECORDATION TYPE			19		
TMK0200556	20020801	20100215	RALPH LAUREN ROMANCE	PRL USA HOLDINGS, INC.	N
TMK0200557	20020801	20090404	POLO	PRL USA HOLDINGS, INC.	N
TMK0200558	20020801	20041011	POLO SPORT	PRL USA HOLDINGS, INC.	N
TMK0200559	20020801	20110714	LAUREN RALPH LAUREN	PRL USA HOLDINGS, INC.	N
TMK0200560	20020801	20020825	SAFARI	PRL USA HOLDINGS, INC.	N
TMK0200561	20020801	20021012	POLO PLAYER SYMBOL	PRL USA HOLDINGS, INC.	N
TMK0200562	20020801	20070825	SAFARI	PRL USA HOLDINGS, INC.	N
TMK0200563	20020801	20021012	POLO RALPH LAUREN	PRL USA HOLDINGS, INC.	N
TMK0200564	20020801	20031129	LAUREN RALPH LAUREN & DESIGN	PRL USA HOLDINGS, INC.	N
TMK0200565	20020801	20031129	CHAPS RALPH LAUREN (& DESIGN)	PRL USA HOLDINGS, INC.	N
TMK0200566	20020801	20030104	RALPH LAUREN	PRL USA HOLDINGS, INC.	N
TMK0200567	20020802	20061029	DEBUT	DEBUT RECORDS (PARTNERSHIP)	N
TMK0200568	20020802	20050905	(2) DESIGN	FANTASY INC.	N
TMK0200569	20020802	20050905	ENTERPRISE	FANTASY INC.	N
TMK0200570	20020802	20050919	FANTASY	FANTASY INC.	N
TMK0200571	20020802	20090213	GALAXY	FANTASY INC.	N
TMK0200572	20020802	20061210	GOOD TIME JAZZ	FANTASY INC.	N
TMK0200573	20020806	20040208	GOOD TIME JAZZ	FANTASY INC.	N
TMK0200574	20020806	20080113	JAZZLAND	FANTASY INC.	N
TMK0200575	20020806	20060924	KICKING MULE	FANTASY INC.	N
TMK0200576	20020806	20070114	ORIGINAL JAZZ CLASSICS	FANTASY INC.	N
TMK0200577	20020806	20030112	ORIGINAL JAZZ CLASSICS	FANTASY INC.	N
TMK0200578	20020806	20051007	PABLO	FANTASY INC.	N
TMK0200579	20020806	20051107	RESPECT	FANTASY INC.	N
TMK0200580	20020806	20060528	SPECIALITY	FANTASY INC.	N
TMK0200581	20020806	20031228	SPECIALTY	FANTASY INC.	N
TMK0200582	20020806	20080310	STAX	FANTASY INC.	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0200583	20020806	20080310	STAX	FANTASY INC.	N
TMK0200584	20020806	20111029	STAX	FANTASY INC.	N
TMK0200585	20020806	20051014	TAKOMA	FANTASY INC.	N
TMK0200586	20020806	20060910	TRU SOUND	FANTASY INC.	N
TMK0200587	20020806	20070204	TRUTH	FANTASY INC.	N
TMK0200588	20020806	20051107	WE PRODUCE	FANTASY INC.	N
TMK0200589	20020807	20111113	DM	TWINPOINT ENTERPRISES, INC.	Y
TMK0200590	20020807	20080114	CELESTOLIDE	INT'L FLAVORS & FRAGRANCES	N
TMK0200591	20020807	20050101	BACDANOL	INT'L FLAVORS & FRAGRANCES INC.	N
TMK0200592	20020807	20071209	GALAXOLIDE	INT'L FLAVORS & FRAGRANCES INC.	N
TMK0200593	20020807	20100425	CASHMERAN	INT'L FLAVORS & FRAGRANCES INC.	N
TMK0200594	20020807	20060513	NAT ROBBINS	GREAT AMERICAN COSMETICS, INC.	N
TMK0200595	20020807	20070722	PRESS & GO	COSMAR CORPORATION	N
TMK0200596	20020807	20070722	PRO 10	FINANZ ST. HONORE B.V.	N
TMK0200597	20020807	20060507	PRO 10	FINANZ ST. HONORE B.V.	N
TMK0200598	20020807	20080414	PRO 10	FINANZ ST. HONORE B.V.	N
TMK0200599	20020807	20040503	PRO 10	FINANZ ST. HONORE B.V.	N
TMK0200600	20020807	20080901	PRO 10	FINANZ ST. HONORE B.V.	N
TMK0200601	20020808	20111121	INNER RIM OF LOCK NUT	MACLEAN INDUSTRIAL, L.L.C.	Y
TMK0200602	20020808	20110828	MY ULTRA SECRET STUFF	SWINGSET PRESS, LLC	Y
TMK0200603	20020808	20120406	ALOHA HAWAII LEI	TRADE WEST INCORPORATED	N
TMK0200604	20020808	20041122	ROOIBOS	VIRGINIA BURKE-WATKINS	N
TMK0200605	20020808	20051031	TTC	TRAVERS TOOL CO., INC.	N
TMK0200606	20020808	20110918	G FORCE	POSTELL ASSOCIATES, INC.	N
TMK0200607	20020808	20121020	WYOMING COWBOYS	UNIVERSITY OF WYOMING	Y
TMK0200608	20020808	20120616	UNIVERSITY OF WYOMING	UNIVERSITY OF WYOMING	Y
TMK0200609	20020808	20080505	EDGE AND DESIGN	HOLLYWOOD SOUND INTERNATIONAL	N
TMK0200610	20020808	20040215	HOLLYWOOD SOUND AND DESIGN	HOLLYWOOD SOUND INTERNATIONAL	N
TMK0200611	20020808	20110703	HIGH VOLTAGE	HOLLYWOOD SOUND INTERNATIONAL	N
TMK0200612	20020808	20110828	X EXCURSION	THE SPRECHER WERKS CORPORATION	N
TMK0200613	20020808	20090615	MAFOS	THE SPRECHER WERKS CORPORATION	N
TMK0200614	20020813	20100208	RAZOR AND GLOBE DESIGN	SUPPER-MAX CORPORATION	N
TMK0200615	20020814	20120209	PUMA AND DESIGN	PUMA AG RUDOLF DASSLER SPORT	N
TMK0200616	20020815	20100920	PING	KARSTEN MANUFACTURING CORP.	N
TMK0200617	20020815	20110728	MAN WITH GOLF CLUB (DESIGN)	KARSTEN MANUFACTURING CORP.	N
TMK0200618	20020815	20120714	CADILLAC	GENERAL MOTORS CORPORATION	N
TMK0200619	20020821	20101025	CARAVELLE	BULOVA CORPORATION	N
TMK0200620	20020821	20100203	MARINE STAR	BULOVA CORPORATION	N
TMK0200621	20020822	20120130	SUNKIST	SUNKIST GROWERS, INC.	N
TMK0200622	20020822	20050423	NATIONAL SPINNING	NATIONAL SPINNING CO., INC.	N
TMK0200623	20020822	20120305	SWIRL DEVICE	CALLAWAY GOLF COMPANY	N
TMK0200624	20020822	20041206	UGIMA	UGINE SAVOIE IMPHY	N
TMK0200625	20020822	20120223	KONICA	KONICA CORPORATION	N
TMK0200626	20020822	20091128	D.Y.	YURMAN DESIGN INC.	N
TMK0200627	20020822	20110924	THE CABLE COLLECTION	YURMAN DESIGN INC.	N
TMK0200628	20020822	20091114	L'ANZA	BOLESLAW WYDZGA	N
TMK0200629	20020822	20030316	WITTNAUER	WESTFIELD LICENSING COMPANY	N
TMK0200630	20020822	20081229	MURRAY	MURRAY, INC.	N
TMK0200631	20020822	20021115	MURRAY	MURRAY, INC.	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0200632	20020822	20091214	MURRAY	MURRAY, INC.	N
TMK0200633	20020822	20110918	ITF	SEREFF TAEKWON-DO INC.	N
TMK0200634	20020822	20110623	SYNCSORT	SYNCSORT INCORPORATED	N
TMK0200635	20020822	20110529	PIKACHU	NINTENDO OF AMERICA INC.	N
TMK0200636	20020822	20120609	SUPER NINTENDO ENTERTAINMENT SYSTEM	NINTENDO OF AMERICA INC.	N
TMK0200637	20020827	20111013	SHIELD DESIGN	SPENCER'S, INC.	N
TMK0200638	20020827	20100613	HR HALDIRAM'S	HALDIRAM INDIA (P) LTD.	N
TMK0200639	20020827	20110403	SLANTED NOSE SLEEVE	BECKSON MANUFACTURING, INC.	N
TMK0200640	20020827	20110710	CONFIGURATION OF A T-SHAPED PUMP HANDLE	BECKSON MANUFACTURING, INC.	N
TMK0200641	20020827	20110911	CONFIGURATION OF A T-SHAPED HAND PUMP HANDLE	BECKSON MANUFACTURING, INC.	N
TMK0200642	20020828	20120422	TRAVEL ETCH A SKETCH	THE OHIO ART COMPANY	N
TMK0200643	20020828	20111026	ETCH A SKETCH	THE OHIO ART COMPANY	N
TMK0200644	20020828	20100620	MUZZLE END OF A PAINTBALL GUN BARREL	DYE PRODUCTS, INC.	N
TMK0200645	20020828	20120205	GOLDEN BUFFALO	PROSPERITY RESOURCES INT'L INC.	N
TMK0200646	20020828	20040415	CONFIGURATION OF A HOT SAUCE BOTTLE	HUY FONG FOODS, INC.	N
TMK0200647	20020828	20040415	CONFIGURATION OF A HOT SAUCE BOTTLE	HUY FONG FOODS, INC.	N
TMK0200648	20020828	20031214	WHI	INTERTEK TESTING SERVICES NA INC	N
TMK0200649	20020828	20080922	ETL VERIFIED	INTERTEK TESTING SERVICES NA INC	N
TMK0200650	20020828	20120209	PUMA LEAPING CAT	PUMA AG RUDOLF DASSLER SPORT	N
TMK0200651	20020828	20101017	ETL SANITATION LISTED	INTERTEK TESTING SERVICES NA INC	N
TMK0200652	20020828	20050117	ETL LISTED	INTERTEK TESTING SERVICES NA INC	N
TMK0200653	20020829	20060716	TWP LIPS	GHANIMIAN ENTERPRISES, INC.	N
TMK0200654	20020829	20040410	BIOSILK	FAROUK SYSTEMS, INC.	N
TMK0200655	20020829	20101205	SILK THERAPY	FAROUK SYSTEMS, INC.	N
TMK0200656	20020829	20111009	REPAIR & SHINE	FAROUK SYSTEMS, INC.	N
TMK0200657	20020829	20101028	CARON	CARON INTERNATIONAL, INC.	N
TMK0200658	20020829	20061108	HANSON	THE IRWIN COMPANY	N
TMK0200659	20020829	20120709	CC CC CC CC	COACH SERVICES, INC.	N
TMK0200660	20020829	20061014	10R	PETERSEN MANUFACTURING CO., INC.	N
TMK0200661	20020829	20090518	TWO SHAKING HANDS	AMERICAN TOOL COMPANIES, INC.	N

SUBTOTAL RECORDATION TYPE 106

TOTAL RECORDATIONS ADDED THIS MONTH 125

RECEIPT OF AN APPLICATION FOR "LEVER-RULE" PROTECTION

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

ACTION: Notice of receipt of application for "Lever-Rule" protection.

SUMMARY: Pursuant to 19 CFR 133.2(f), this notice advises interested parties that Customs has received an application from Dornier Medical Systems, Inc. seeking "Lever-Rule" protection.

FOR FURTHER INFORMATION CONTACT: Joseph E. Howard, Esq., Intellectual Property Rights Branch, Office of Regulations & Rulings, (202) 572–8701.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to 19 CFR 133.2(f), this notice advises interested parties that Customs has received an application from Dornier Medical Systems, Inc. seeking "Lever-Rule" protection. Protection is sought against importations of the following product intended for sale in Europe:

> Dornier Epos® Ultra orthopedic shockwave device which bears the following Trademark: "Epos," (U.S. Patent and Trademark Registration No. 2,466,902; U.S. Customs Service Recordation No. TMK 02–00546).

Pursuant to 19 CFR 133.2(f), Customs will publish an additional notice in the CUSTOMS BULLETIN indicating whether the trademark will receive Lever-rule protection relevant to the specific product if Customs determines that the subject orthopedic shockwave device is physically and materially different from the product authorized for sale in the United States.

Dated: September 17, 2002.

JOANNE ROMAN STUMP, CHIEF,
Intellectual Property Rights Branch,
Office of Regulations and Rulings.

RECEIPT OF DOMESTIC INTERESTED PARTY PETITION CONCERNING TARIFF CLASSIFICATION OF DAIRY PROTEIN BLENDS

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of a domestic interested party requesting the reclassification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain imported dairy protein blends. The petitioner contends that the imported dairy products are being mischaracterized as milk protein concentrates and have been incorrectly classified in subheading 0404.90.1000 HTSUS, with a general rate of duty of 0.37¢ per kilogram. Petitioner contends that the products are properly classifiable under various subheadings of heading 0402, HTSUS. This document invites comments with regard to the correctness of the current classification.

DATES: Comments must be received on or before November 18, 2002.

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

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202–572–8778.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document concerns two Customs rulings on the tariff classification of certain imported dairy protein blends. The imported products that are the subject of the rulings are identified as being a "milk protein concentrate" and have, according to the rulings, the following ingredients:

Product 1:

> Lactose (42.2 percent, +/–0.5 percent), protein (41.5 percent, +/–0.5 percent), ash (8.2 percent, +/–0.5 percent), moisture (4.1 percent, +/–0.3 percent), and fat (2.5 percent, +/–0.5 percent).

Product 2:

> Protein (41 percent), fat (29 percent), minerals (7 percent), and moisture (6 percent).

A petition has been filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of American producers of dairy products that directly compete with the imported dairy blends requesting that Customs reclassify the imported products. Customs has classified these products under subheading 0404.90.1000, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for: "Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included: Other: Milk protein concentrates" which has a general duty rate of 0.37 cents per kilogram, and is not subject to a tariff-rate quota. The petition contends that these products are blends, i.e., mixtures of skim milk powder and other dry milk ingredients—such as "milk protein concentrate"—created, at least in part, to circumvent the tariff rate quotas.

Classification under the HTSUS is determined 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 Harmonized Commodity Description and Coding System, Explanatory Notes (EN), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and the GRI. The EN, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are indicative of the proper interpretation of these headings. See T.D. 89–80, 54 FR 35127, 35128 (August 23, 1989).

Classification of dairy products is essentially based on the composition of the product. In the present case, direction is also provided by Additional U.S. Note 13 to Chapter 4, which states: "For the purposes of subheading 0404.90.10, the term "*milk protein concentrate"* means any complete milk protein (casein plus lactalbumin) concentrate that is 40 percent or more protein by weight."

In New York Ruling Letter (NY) 800374, dated July 27, 1994 and NY D83787, dated November 13, 1998, Customs classified two dairy products, both identified by the importer as "milk protein concentrates," in subheading 0404.90.1000, HTSUS, as milk protein concentrates. Both products contain over 40 percent milk protein concentrate. Additionally, one product also contains a significantly higher percentage of fat than naturally occurs in milk. Unfortunately, neither ruling contains information about the method(s) used to produce either product, and the original files were lost in the destruction of the New York Customs House at the World Trade Center on September 11, 2001.

Petitioner contends that neither of the products classified in those rulings should be classified in subheading 0404.90.1000, HTSUS. Petitioner contends that the expression "complete milk protein" in Additional U.S. Note 13 requires the presence of both casein and lactalbumin in the same, or very nearly the same proportion, relative to each other, as they are naturally found in skim milk. Petitioner further contends that the term "complete" requires that the product be a unified protein complex that retains the functional properties of the proteins, including both casein and lactalbumin, as they occur in skim milk. Petitioner further contends that the term "concentrate" requires that the product have been concentrated—i.e., reduced in volume or bulk by the removal of liquids and other ingredients.

In support of its position, petitioner refers to Customs rulings (HQ 052200, dated September 1, 1977 and HQ 070297, dated October 7, 1982) and legislative history surrounding development of item 118.45, and its addition to the Tariff Schedules of the United States (TSUS), the predecessor to the HTSUS, in 1984, in section 123 of the Tariff and Trade Act of 1984 (Public Law 98–573, 98 Stat. 2955, October 30, 1984).

Petitioner argues that the legislative history and early Customs rulings indicate that the tariff provision for "milk protein concentrates" was created to cover products that had been manufactured by means of an ultra-filtration process that isolates all the protein concentrates of non-fat dry milk (NFDM) (casein and lactalbumin) in a single protein complex, while retaining all of their functional properties.

Petitioner states that the expression "complete milk protein (casein plus lactalbumin) concentrate" found in Additional U.S. Note 13 "was intended to cover dairy products (1) that are fully functional (unified) protein complexes, (2) that are undenatured, (3) that retain their functional properties after ultra-filtration, and (4) that are in concentrate form."

Petitioner maintains that the ultra-filtration process is the only one which produces a product that fits this standard, since the resulting milk protein concentrate product is what remains after the liquid and other ingredients have been removed from the skim milk by filtration. Petitioner argues that dairy protein blends contain various proteins that are not complete or whose functionality has been altered by processing, thus making the resulting product ineligible for classification in subheading 0404.90.1000, HTSUS.

Petitioner asserts that dairy protein blends do not satisfy the definition found in Additional U.S. Note 13 to Chapter 4, HTSUS, and are properly classified as "milk * * * in powder, granules or other solid forms," under subheading 0402.10. 0402.21, or 0402.29, HTSUS, depending on their fat content. As such, they would be subject to tariff rate quotas.

Comments:

Pursuant to section 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments on the petition from interested parties.

The domestic party petition, as well as all comments received in response to this notice will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552, Section 1.4, Treasury Department Regulations (31 CFR 1.4), and Section 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. and 4:30 p.m. on regular business days, at the U.S. Customs Service, Office of Regulations and Rulings, Regulations Branch, 5th Floor, 799 9th Street, N.W. Washington, D.C. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at 202–572–8768.

Authority:

This notice is published in accordance with section 175.21(a), Customs Regulations (19 CFR 175.21(a)), 19 U.S.C. 1516.

ROBERT C. BONNER,
Commissioner of Customs.

Approved: September 13, 2002.

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

[Published in the Federal Register, September 18, 2002 (67 FR 58837)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, September 18, 2002.

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

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

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF MEN'S SHIRT-JACKET

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

ACTION: Notice of proposed revocation of a ruling letter and revocation of treatment relating to the tariff classification of a men's shirt-jacket.

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 relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a men's shirt-jacket. Customs also proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before November 1, 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 U.S. Customs Service, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Shari Suzuki, Textiles Branch, at (202) 572–8818.

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 a ruling relating to the tariff classification of a men's shirt-jacket. Although in this notice Customs is specifically referring to the revocation of New York Ruling Letter (NY) G87641, dated March 12, 2001, (Attachment A), this notice covers any rulings on such merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, 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 that is contrary to the position set forth in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations

of merchandise subsequent to the effective date of the final decision on this notice.

In NY G87641, Customs classified a long-sleeved men's woven shirt-jacket, with an outer shell of 70 percent cotton and 30 percent nylon woven fabric and a body lined with 100 percent polyester fleece fabric, under subheading 6205.20.2065, HTSUSA, which provides for men's shirts. The garment has three jacket-type features (*i.e.,* full lining, pockets below the waist, and large front closure snaps), and possesses the overall bulk and appearance of a jacket.

Based on our analysis of the garment, scope of the terms of subheadings 6205.20.2065, HTSUSA, and 6201.92.2051, HTSUSA, the Explanatory Notes and the *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88, the subject garment is properly classifiable under subheading 6201.92.2051, HTSUSA, which provides for anoraks (including ski jackets), windbreakers and similar articles.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY G87641, and any other ruling not specifically identified, that is contrary to the determination set forth in this notice, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter HQ 965037 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 16, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, March 12, 2001.

CLA–2–62:RR:NC:WA:355 G87641
Category: Classification
Tariff No. 6205.20.2065

MS. DANA MOBLEY
J. C. PENNEY COMPANY, INC.
PO. Box 10001
Dallas, TX 75301–0001

Re: The tariff classification of a men's shirt-jacket from Hong Kong.

DEAR MS. MOBLEY:

In your letter dated February 19, 2001, you requested a classification ruling.

The garment is a shirt-jacket identified as style number 2802B, lot number 528–2103. The garment has long sleeves with cuffs which have snap fasteners, a full front opening secured by six snaps, a shirt type collar, two front breast pockets with flaps, two side pockets at waist level, two side seam vents, and a hemmed bottom. The shell of the garment is made of 70 percent cotton, 30 percent nylon woven fabric. The shirt body is lined with 100 percent polyester fleece fabric; the sleeves are lined with 100 percent nylon woven fabric. The weight of the fleece lining is given as 265gm/m2. The weight of the shell fabric is stated to be 11.8 ounces per square yard. No weight is given for the sleeve lining fabric. The overall weight of the garment is stated to be 1 pound and 12 ounces.

The applicable subheading for the shirt-jacket will be 6205.20.2065, Harmonized Tariff Schedule of the United States (HTS), which provides for men's or boys' shirts, of cotton, other, other, other, other, men's. The duty rate will be 20.1 percent ad valorem.

Style 2802B falls within textile category designation 340. Based upon international textile trade agreements products of Hong Kong are subject to quota and the requirement of a visa.

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

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Camille Ferraro at 212–637–7082.

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

[ATTACHMENT B]

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

CLA–2 RR:CR:TE 965037 SK
Category: Classification
Tariff No. 6201.92.2051

ELIZABETH M. CANTU
CUSTOMS ANALYST
J.C. PENNEY COMPANY, INC.
P.O. Box 10001
Dallas, TX 75301–0001

Re: Revocation of NY G87641 (March 12, 2001); classification of a men's garment; shirt v. jacket; Guidelines; garment must have 3 jacket features to be classifiable as such and if the result is not unreasonable; heading 6201, HTSUS.

DEAR MS. CANTU:

This is in regard to your letter dated May 11, 2001, requesting a reconsideration of New York Ruling Letter (NY) G87641, dated March 12, 2001, regarding the classification of a men's garment. After review of NY G87641, it has been determined that classification of the garment in subheading 6205.20.2065, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY G87641.

A sample was submitted to Customs for examination.

Facts:

The merchandise at issue is a men's woven shirt-jacket, identified as style number 2802B. The garment has long sleeves with vented cuffs secured with adjustable snap closures, a full front opening secured by 5 snap closures, a pointed shirt-type collar, two front breast pockets with flaps secured by hook and loop closures, side pockets at the waist, two side seam vents and a hemmed bottom. The shell of the garment is made of 70 percent cotton and 30 percent nylon woven fabric. The shirt body is lined with 100 percent polyester fleece fabric. The sleeves are lined with 100 percent nylon woven fabric.

Your original ruling request submitted to Customs prior to the issuance of NY G87641 stated that the garment's shell weight was 11.8 ounces per square yard and the weight of the fleece lining was 265 grams per square meter (approximately 9.35 ounces per square yard). These figures were used in NY G87641. In your request for a reconsideration of NY G87641, you again resubmitted these same fabric weights. Examination of the submitted sample, however, yields the finding that the shell weight is actually 5.4 ounces per square yard, and the fleece lining is approximately 4.2 ounces per square yard.

In NY G87641, the subject garment was classified under subheading 6205.20.2065, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for, in pertinent part, other men's shirts of cotton.

In your request for a reconsideration of NY G87641, you state that style 2802B is properly classifiable under subheading 6201.12.2050, HTSUSA, which provides for overcoats, carcoats, capes, cloaks and similar coats. In support of your assertion, you state that the subject garment possesses four jacket features and cite to the Informed Compliance Publication entitled, *What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS*, dated November, 2000. Additionally, you submit a floor plan for J.C. Penney stores indicating how the subject merchandise will be displayed/marketed within your stores (*i.e.*, in the "Outerwear" department, adjacent to other outerwear items).

Issue:

Whether the subject garment is properly classifiable as a men's shirt in heading 6205, HTSUSA, as a men's coat in 6201, HTSUSA, or as a men's anorak (including ski jackets), windbreaker or similar article in heading 6201, HTSUSA?

Law and Analysis:

Classification of merchandise under the HTSUSA is in accordance with the General Rules of Interpretation (GRI), taken in order. GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter

notes, taken in order. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI.

Style 2802B is considered a hybrid garment because it exhibits features generally associated with both a shirt and a jacket. The Explanatory Notes to the Harmonized Commodity and Description and Coding System (EN) to heading 6201, HTSUSA, state that garments of this heading are generally worn over all other clothing for protection against the weather. The EN to heading 6205, HTSUSA, indicate that "with the exception of nightshirts, singlets, and other vests of heading 6207, [the] heading covers shirts not knitted or crocheted for men or boys including shirts with detachable collars, dress shirts, sport shirts and leisure shirts."

Because this garment possesses features attributable to both jackets and shirts, and neither the legal notes to the HTSUS nor the EN provide additional specific guidance in this area, we look to the *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88, (*Guidelines*) for assistance in differentiating jackets from shirts. The *Guidelines* state, in pertinent part:

> Shirt-jackets have full or partial front openings and sleeves, and at the least cover the upper body from the neck area to the waist. They may be within the coat category if designed to be worn over another garment (other than underwear). The following criteria may be used in determining whether a shirt-jacket is designed for use over another garment, the presence of which is sufficient for its wearer to be considered modestly and conventionally dressed for appearance in public, either indoors or outdoors or both:
>
> 1. Fabric weight equal to or exceeding 10 ounces per square yard.
> 2. A full or partial lining.
> 3. Pockets at or below the waist
> 4. Back vents or pleats. Also side vents in combination with back seams.
> 5. Eisenhower styling.
> 6. A belt or simulated belt or elasticized waist on hip length or longer shirt-jackets.
> 7. Large jacket/coat style buttons, toggles or snaps, a heavy-duty zipper or other heavy-duty closure, or buttons fastened with reinforcing thread for heavy-duty use.
> 8. Lapels.
> 9. Long sleeves without cuffs.
> 10. Elasticized or rib-knit cuffs.
> 11. Drawstring, elastic or rib-knit waistband.
>
> Garments having features of both jackets and shirts will be categorized as coats if they possess at least three of the above listed features and if the result is not unreasonable. * * * Garments not possessing at least 3 of the listed features will be considered on an individual basis.

As explicitly stated in the *Guidelines*, borderline garments will be classified as jackets only if they possess three jacket features and the result is not unreasonable. In the instant case, the subject garment possesses three of the jacket features referenced in the *Guidelines*. The garment has a full lining, pockets at or below the waist, and large jacket style snaps.

This office does not agree with your submission that the subject garment is of the requisite jacket fabric weight (*i.e.,*, equal to or exceeding 10 ounces per square yard). As stated above, Customs examination of the garment concluded that the outer shell weighed only 5.4 ounces per square yard. Additionally, this office does not consider the submitted J.C. Penney floor plan indicating that the subject merchandise will be displayed/marketed with outerwear items as persuasive of the garment's classification. It is our view that such extrinsic evidence is often contradictory (different stores may display similar merchandise differently), created post-importation and thus less reliable, and generally not conducive to the uniform application of classification principles set forth in the *Guidelines* and the HTSUS.

Based on the foregoing, it is the opinion of this office that the subject garment has the overall character of a jacket based on its cut, the type of shell fabric used in its construction, the finishing details (*e.g.*, double row stitching around the pockets), and the bulk of the garment and the fleece lining which is not typically associated with lined shirts. Although the garment is classifiable in heading 6201, HTSUS, it is not classifiable in subheading 6201.12.2050, HTSUSA, in that the garment is not similar to an overcoat, carcoat, cape, cloak or similar coat. Rather, style 2802B is classifiable under subheading

6201.92.2051, HTSUSA, which covers anoraks (including ski jackets), windbreakers and similar articles.

Holding:

NY G87641 is hereby revoked.

Style 2802B is classifiable in subheading 6201.92.2051, HTSUSA, which provides for men's or boys' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6203: anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets): of cotton: other: other; other: other: men's. The applicable rate of duty is 9.5 percent *ad valorem* and the quota category is 334.

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

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

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

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN UNFINISHED SHOE LACING MATERIALS

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

ACTION: Notice of modification of tariff classification ruling letter and revocation of treatment relating to the classification of certain unfinished shoe lacing materials.

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 modifying one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain unfinished shoe lacing materials. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published August 14, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 33. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Timothy Dodd, Textiles Branch: (202) 572–8819.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the August 14, 2002, CUSTOMS BULLETIN, Vol. 36, No. 33, proposing to modify New York Ruling Letter (NY) G82846, relating to the tariff classification of certain unfinished shoe lacing materials. The period to submit comments expired on September 13, 2002. No comments were received.

In New York Ruling Letter (NY) G82846, dated November 20, 2000, the Customs Service classified certain unfinished shoe lacing materials in the piece under subheading 5808.10.7000, HTSUSA, which provides for "Braids in the piece * * *: Other: Of cotton or man-made fibers."

It is now Customs determination that the proper classification for the certain unfinished shoe lacing materials in the piece is subheading 5806.32.2000, HTSUSA, which provides for "Narrow woven fabrics, other than goods of heading 5807; * * * Other woven fabrics: Of man-made fibers: Other." Headquarters Ruling Letter (HQ) 965492 modifying, in part, NY G82846 is set forth in the Attachment to this document.

Although in this notice Customs is specifically referring to one New York Ruling Letter (NY), this modification covers 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.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY G82846, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 965492, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

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

Dated: September 16, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 16, 2002.

CLA–2 RR:CR:TE 965492 ttd
Category: Classification
Tariff No. 5806.32.2000

MR. KERRY W. KEATING
PRESIDENT AND CEO
MITCHELLACE, INC.
830 Murray Street
PO. Box 89
Portsmouth, OH 45662–0089

Re: Modification of New York Ruling Letter G82846, dated November 20, 2000; Classification of Unfinished Shoe Lacings and Shoelaces.

DEAR MR. KEATING:

This letter concerns New York Ruling Letter (NY) G82846, issued to you on November 20, 2000, regarding the tariff classification of certain unfinished shoe lacings in the piece, and finished shoelaces under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After review of that ruling, Customs has determined that the classification of four out the fourteen styles of unfinished shoe lacings in the piece in heading 5808, HTSUSA, was incorrect. For the reasons that follow, this ruling modifies, in part, NY G82846.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed modification of NY G82846 was published on August 14, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 33. As explained in the notice, the period within which to submit comments on this proposal was until September 13, 2002. No comments were received in response to this notice.

Facts:

The articles at issue are four styles of unfinished shoelacings in the piece, identified as style numbers L1017, L4860, L8244SP and L1008. In NY G82846, we incorrectly determined that when imported in the piece, these four styles would be classified under sub-

heading 5808.10.7000, HTSUSA, which provides for "Braids in the piece * * *: Other: Of cotton or man-made fibers."

We note that the Customs National Commodity Specialist Division (NCSD) classified fourteen of twenty-four samples in NY G82846 and then forwarded the remaining ten styles to the Office of Regulations & Rulings to determine their proper tariff classification. In HQ 965230, dated April 30, 2002, we classified the remaining ten styles. In the process of completing HQ 965230, Customs inquired about the meaning of the letter "L" in the style number, of a related style (style number L811P considered in HQ 965230). You informed us that the "L" denotes "loom." Based on the fact that each style currently at issue has an "L" in the style number, we presume that each one was also made on a "loom." Accordingly, based on this assumption, this characteristic distinguishes the subject styles from being made on a braiding machine.

Issue:

What is the proper classification of the four styles of unfinished shoelacing material in the piece?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." In the event that goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989).

Heading 5808, HTSUSA, provides for, *inter alia*, braids in the piece. The EN to heading 5808, HTSUSA, provide in pertinent part:

(1) **Flat or tubular braids.**

* * * * * * *

Braid is made on special machines known as braiding or spindle machines.

* * * * * * *

In this case, based on our presumption that "L" denotes "loom," the subject styles were not made on special braiding or spindle machines. Accordingly, none of the four styles at issue are properly classifiable under heading 5808, HTSUSA, as braids in the piece.

Heading 5806, HTSUSA, provides for, among other things, narrow woven fabrics, other than goods of heading 5807. Heading 5807, HTSUSA, provides for "Labels, badges and similar articles of textile materials, in the piece, in strips or cut to shape or size, not embroidered." As the subject unfinished shoe lacing materials are not labels, badges or similar articles, they are precluded from classification in heading 5807, and therefore potentially classifiable in heading 5806.

In HQ 965230, issued to you on April 30, 2002, Customs classified style number L1200, in the piece, under subheading 5806.32.2000, HTSUSA. Style number L1200 was described as a tubular narrow woven fabric with a textile core. Before issuing that ruling, we inquired about the meaning of the letter "L" in the style number, of a related style (style number L811P also considered in HQ 965230). In response, you informed us that the "L" denotes "loom." Assuming the "L" in the style number denotes "loom", we found that style number L1200 is distinguished from being made on a braiding machine. Therefore, we found that style number L1200 was not properly classified in heading 5808, HTSUSA, as braids, in the piece. Rather, style number L1200, in the piece, was properly classified in subheading 5806.32.2000, HTSUSA, which provides for narrow woven fabrics of man-made fibers other than ribbon.

Assuming again that the "L" in the style number denotes "loom", style numbers L1017, L4860, L8244SP and L1008 are more accurately described as narrow woven fabrics. Accordingly, like style number L1200 in HQ 965230, the four styles, in the piece, are properly classified in heading 5806, HTSUSA, as narrow woven fabric of man-made fibers other than ribbon.

Holding:

Based on the assumption that the "L" in each style number represents "loom," style numbers L1017, L4860, L8244 and L1008, in the piece, are classifiable subheading 5806.32.2000, HTSUSA, which provides for "Narrow woven fabrics, other than goods of heading 5807; * * * Other woven fabrics: Of man-made fibers: Other." The current rate of duty is 6.4 percent *ad valorem* and the textile restraint category is 229.

NY G82846 is hereby modified, in part. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

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

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

MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE COUNTRY OF ORIGIN OF NURSING PADS AND THE TARIFF CLASSIFICATION OF NURSING PADS

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

ACTION: Notice of modification of a country of origin ruling letter, revocation of three tariff classification ruling letters and revocation of treatment relating to the country of origin and classification of nursing pads.

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 modifying one ruling and revoking three rulings relating to the country of origin and tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of nursing pads. Customs is also revoking any treatment previously accorded by it to substantially identical merchandise.

Notice of the proposed action was published on August 14, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 33. The Customs Service received no comments.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 2, 2002.

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textiles Classification Branch: (202) 572–8817

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI, notice proposing to modify one ruling letter, HQ 961238 (April 21, 1998), relating to the country of origin of nursing pads and proposing to revoke three ruling letters, NY C81609 (Nov. 19, 1997), NY D82853 (Oct. 16, 1998) and HQ 963488 (May 2, 2000), relating to the tariff classification of nursing pads, was published in the CUSTOMS BULLETIN, Volume 36, Number 33 (Aug. 14, 2002). The Customs Service received no comments in response to the notices of proposed action. Customs published two notices, both in the same edition of the CUSTOMS BULLETIN.

Although the proposed notices specifically referenced to two Headquarters Ruling Letters and two New York Ruling Letters, the notice advised all interested parties that they covered any rulings on identical or substantially similar merchandise that may exist, but had not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, an internal advice memorandum or decision or a protest review decision) on the merchandise subject to this notice, which determined a contrary country of origin or

which classified the merchandise contrary to this notice, should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)) as amended by section 623 of Title VI, Customs 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 have advised Customs during the comment period. An importer's failure to have advised Customs of substantially identical merchandise or of a specific ruling not identified in the proposed notice, may raise issues of reasonable care on the part of the importers or their agents for importation of merchandise subsequent to the effective date of this notice.

The Customs Service in Headquarters Ruling Letter 961238 addressed the importer's entitlement to preferential tariff treatment pursuant to the North American Free Trade Agreement (NAFTA) and the country of origin of two styles of nursing pads. One style of nursing pad was composed entirely of woven cotton fabric formed in China and cut, joined together and edge-sewn in Canada. The second style of nursing pad was composed of woven cotton fabric formed in China, woven nylon fabric with a polyurethane coating formed in the United States and then cut, joined together and edge-sewn in Canada. The Customs Service in HQ 961238, relying on the merchandise being classified in subheading 6217.10.9510, HTSUSA, held that neither style nursing pad qualified for preferential tariff treatment pursuant to the NAFTA and that the country of origin of both styles of nursing pads was Canada.

It is now Customs determination that the country of origin of both styles of nursing pads is China, pursuant to the legal reasoning and analysis set forth in HQ 964387. The country of origin of the nursing pad composed entirely of woven cotton fabric formed in China and cut, joined together and edge-sewn in Canada is provided by 19 C.F.R. 102.21(c)(2). Paragraph (c)(2) of section 102.21, pursuant to paragraph (e), applicable when the country of origin can not be determined pursuant paragraph (c)(1), provides that the country of origin of goods classified in subheading 6307.90, HTSUS, shall be the country in which the fabric-making process occurred.

The country of origin of the nursing pad composed of woven cotton fabric formed in China, woven nylon fabric with a polyurethane coating formed in the United States and then cut, joined together and edge-sewn in Canada is provided by 19 C.F.R. 102.21(c)(4). Paragraph (c)(4) provides that the country of origin of goods that could not be determined pursuant to section 102.21(c)(1), (2) or (3), shall be the country in which the most important assembly or manufacturing process occurs. Head-

quarters Ruling Letter 964387 is set forth as "Attachment A" to this document.

The Customs Service in New York Ruling Letter C81609 classified two styles of nursing pads in subheading 6217.10.9510, HTSUSA. The respective nursing pads in issue in NY C81609 were composed entirely of woven cotton fabric and of woven cotton fabric with an outer layer of polyurethane coated woven nylon fabric.

It is now Customs determination that both styles of nursing pads classified in NY C81609 are properly classified in subheading 6307.90.9889, HTSUSA, pursuant to the legal reasoning and analysis set forth in HQ 965711 (July 24, 2002) and HQ 965750. Headquarters Ruling Letter 965711 is set forth as "Attachment B" to this document and HQ 965750 is set forth as "Attachment C" to this document.

The Customs Service in New York Ruling Letter D82853 classified nursing pads in subheading 6217.10.9510, HTSUSA. The articles in issue in NY D82853 had an initial layer of knit fabric, a second layer of a nonwoven fabric, a third layer, which provided the article with its absorbent capability, composed of a nonwoven polyester fabric and a fourth layer of a woven fabric.

It is now Customs determination that nursing pads with a knit component, nonwoven components and a woven component, in which the absorbent capability is provided by one of the nonwoven components, are properly classified in subheading 6307.90.9889, HTSUSA, pursuant to the legal reasoning and analysis set forth in HQ 965711 and HQ 963826. Headquarters Ruling Letter 965711, as previously advised, is set forth as "Attachment B" to this document and HQ 963826 is set forth as "Attachment D" to this document.

The Customs Service in Headquarters Ruling Letter 963488 classified nursing pads in subheading 6217.10.9510, HTSUSA. The nursing pads classified in HQ 963488 had an initial layer of a nonwoven fabric, an inner absorbent layer of polyester and rayon textile wadding and a third layer of woven fabric.

It is now Customs determination that nursing pads with an initial layer of a nonwoven fabric, an inner absorbent layer of polyester and rayon textile wadding and a third layer of woven fabric are properly classified in subheading 5601.10.2000, HTSUSA, pursuant to the legal reasoning and analysis set forth in HQ 965711 and HQ 964388. Headquarters Ruling Letter 965711, as previously advised, is set forth as "Attachment B" to this document and HQ 964388 is set forth as "Attachment E" to this document.

The Customs Service notes that in the proposed notice of revocation Customs proposed reclassifying the merchandise in HQ 963488 in subheading 6307.90.9889, HTSUSA. Customs anticipated classifying the nursing pads in this subheading under the mistaken belief that the inner absorbent layer of polyester and rayon was a nonwoven. Customs subsequent review of its file material confirms that the inner absorbent layer of polyester and rayon is a textile wadding. The nursing pads ini-

tially classified in HQ 963488 and now reconsidered and reclassified in HQ 964388 are properly classified in subheading 5601.10.2000, HTSUSA.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modify HQ 961238 and revoking NY C81609, NY D82853 and HQ 963488, and any other rulings not specifically identified to reflect the proper country of origin and classification of the merchandise. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

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

Dated: September 18, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 18, 2002.

CLA–2 RR:CR:TE 964387 jsj
Category: Classification
Tariff No. 6307.90.9889

MR. OWEN HAIRSINE
ZEOTROPE HOLDINGS, LTD.
12993 80th Avenue
Surrey, British Columbia
Canada V3W 3B1

Re: Reconsideration and Modification of HQ 961238 (April 21, 1998); Nursing Pads; Breast Pads; Country of Origin; Woven Absorbent Material; Subheading 6307.90.9889, HTSUSA; NY C81609 (Nov. 19, 1997) Modified by HQ 961238 and Revoked by HQ 965750; HQ 965711 (July 24, 2002).

DEAR MR. HAIRSINE:

The purpose of this correspondence is to advise you that the Customs Service has reconsidered Headquarters Ruling Letter 961238 (April 21, 1998).

The Customs Service in Headquarters Ruling Letter 961238 stated that nursing pads composed entirely of woven cotton fabric and nursing pads composed of woven cotton fabric with an outer layer of nylon fabric were classified in subheading 6217.10.9510, HTSUSA. Headquarters Ruling Letter 961238, based on the articles being classified in heading 6217, HTSUS, held that the nursing pads were not entitled to preferential tariff treatment pursuant to the North American Free Trade Agreement (NAFTA) and that their country of origin was Canada.

The Customs Service has reviewed the classification ruling in NY C81609, classifying the nursing pads in subheading 6217.10.9510, HTSUSA, and determined that it is not correct. New York Ruling Letter C81609 is being revoked by HQ 965750 pursuant to the analysis set forth in HQ 965711 (July 24, 2002).

The Customs Service in this ruling letter is modifying HQ 961238. The conclusion concerning the NAFTA preferential tariff treatment eligibility determination is correct, al-

though the reasoning based on the classification ruling is not accurate. Since the conclusion is correct, that the merchandise is not eligible for NAFTA preferential tariff treatment, that aspect of HQ 961238 will not be disturbed.

The Customs Service in this ruling letter is modifying that aspect of HQ 961238 that addressed the country of origin determinations. Headquarters Ruling Letter 961238, based on the merchandise being classified in subheading 6217.10.9510, HTSUSA, ruled that the country of origin of the merchandise was Canada. It is Customs decision in this ruling letter that the country of origin is not Canada. The reasoning and analysis addressing Customs decision concerning the correct country of origin is set forth in this letter.

Pursuant to section 625 (c), Tariff Act of 1930, as amended, 19 U.S.C. 1625 (c), notice of the proposed modification of HQ 961238 was published on August 14, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 33.

Facts:

The articles in issue are two styles of nursing pads.

Style one is composed solely of 100 percent woven cotton fabric. The fabric is cut into three pieces with triangular shapes and three pieces in the shape of a half-moon.

Style two is identical to style one, with the exception that it has a woven nylon fabric with a polyurethane coating on one side of the article. It is Customs understanding that the woven cotton fabric provides the article with its absorbent capability.

The woven cotton fabric for both styles of nursing pads is formed in China. The woven nylon fabric with a polyurethane coating is formed and coated in the United States. The cotton and nylon fabrics are cut, joined and edge sewn in Canada.

Issue:

What is the country of origin of above-described nursing pad, identified by the Customs Service as style one, which is composed entirely of woven cotton fabric formed in China and cut, joined together and edge-sewn in Canada?

What is the country of origin of above-described nursing pad, identified by the Customs Service as style two, which is composed of woven cotton fabric formed in China, woven nylon fabric with a polyurethane coating formed in the United States and then cut, joined together and edge-sewn in Canada?

Law and Analysis:

Classification

The Customs Service in Headquarters Ruling Letter 965711 (July 24, 2002) provided classification analysis, at the heading level for heading 6307, HTSUS, for nursing pads substantially similar to those in this ruling letter composed entirely of woven cotton fabric and nursing pads composed of woven cotton fabric with an outer layer of nylon fabric. Heading 6307, HTSUS, a residual or basket provision, provides for the classification of "[o]ther made up articles, including dress patterns."

The legal reasoning and analysis addressing the classification, at the heading level, in heading 6307, HTSUS, of substantially similar nursing pads set forth in HQ 965711 is incorporated into this ruling letter by reference. Headquarters Ruling Letter 965711 is attached to and made a part of this ruling letter.

The classification of Zeotrope Holding's nursing pads, composed entirely of woven cotton fabric and those composed of woven cotton fabric with an outer layer of nylon fabric are classified in proposed Headquarters Ruling Letter 965750 in subheading 6307.90.9889, HTSUSA. Subheading 6307.90.9889, HTSUSA, provides for:

6307	Other made up articles, including dress patterns:			
6307.90		Other:		
			Other:	
6307.90.98			Other;	
				Other:
6307.90.9889				Other.

Country of Origin

Nursing Pads Composed Entirely of Woven Cotton Fabric Formed in China and Assembled in Canada

The Uruguay Round Agreements Act, particularly section 334, codified at 19 U.S.C. 3592, sets forth the rules of origin for textile and apparel products. Customs, pursuant to

the legislative authority extended to the Secretary of the Treasury, published regulations implementing the principles set forth by Congress.

Section 102.21 of Customs regulations establishes, with specifically delineated exceptions, that "this section shall control the determination of the country of origin of imported textile and apparel products for purposes of the Customs laws." 19 C.F.R. 102.21. Textile and apparel products that are encompassed within the scope of section 102.21 are any goods classifiable in Chapters 50 through 63 of the HTSUSA, as well as goods classifiable under other specifically enunciated subheadings that include subheading 6307.90, HTSUS. *See* 19 C.F.R. 102.21(b)(5).

The nursing pad, identified as style one, is classified in subheading 6307.90.9889, HTSUSA. The nursing pads are, therefore, considered "textile products" for the purposes of section 102.21 country of origin determinations. 19 C.F.R. 102.21(b)(5).

The country of origin of textile and apparel products is determined by the sequential application of paragraphs (c)(1) through (c)(5) of section 102.21. Paragraph (c)(1) provides that "[t]he country of origin of a textile or apparel product is the single country, territory or insular possession in which the good was wholly obtained or produced." Since the fabric of which the nursing pad is composed is formed in China and then cut, joined and edgesewn in Canada, the origin of the assembled nursing pad cannot be determined by reference to paragraph (c)(1).

Paragraph (c)(2) of section 102.21 provides that where the country of origin cannot be determined according to paragraph (c)(1), resort should next be to paragraph (c)(2). The country of origin, according to paragraph (c)(2), is "the single country, territory or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e)" of section 102.21. Paragraph (e), as applicable to the instant determination, establishes a tariff shift rule that provides "The country of origin of a good classifiable under subheading 6307.90 is the country, territory, or insular possession in which the fabric comprising the good was formed by a fabric-making process." Section 102.21 (b)(2) defines "fabric-making process" to mean "any manufacturing operation that begins with polymers, fibers, filaments (including strips), yarns, twine, cordage, rope, or strips and results in a textile fabric." 19 C.F.R. 102.21(b)(2).

Paragraph (c)(2) confers the country of origin of the style one nursing pad. The country of origin of the assembled nursing pad is China because the "fabric comprising the good was formed by a fabric-making process" in China. 19 C.F.R. 102.21(c)(2).

Nursing Pads Composed of Woven Cotton Fabric Formed in China, Nylon Woven Fabric With a Polyurethane Coating Formed in the United States and Assembled in Canada

Commencing the country of origin determination of the style two nursing pad, composed of woven cotton fabric formed in China, woven nylon fabric with a polyurethane coating formed in the United States and assembled in Canada, the Customs Service again referenced section 102.21 of Customs Regulations. Paragraph (c)(1), for the reasons assigned in the origin analysis of the style one nursing pad, does not confer the origin of the style two nursing pad.

Paragraph (c)(2) also fails to confer origin. Paragraph (e), as addressed above and as applicable pursuant to paragraph (c)(2), establishes a tariff shift rule for articles classified in subheading 6307.90, HTSUS. The rule references "*the country* in which the fabric comprising the good was formed by a fabric-making process." (Emphasis added). The style two nursing pad is comprised of fabrics formed in two countries, the United States and China, precluding the application of paragraph (c)(2).

Paragraph (3) of section 102.21, to which resort must be had since neither paragraphs (c)(1) nor (c)(2) determine the origin of the nursing pad, addresses knit to shape goods and goods that are not knit to shape, but which are wholly assembled in a single country, territory or insular possession. *See* 19 C.F.R. 102.21 (c)(3). Paragraph (3) does not confer origin for two reasons. The Zeotrope nursing pad is not a knit to shape good as addressed in subparagraph (c)(3)(i) and, although the nursing pad is assembled entirely in Canada, subparagraph (c)(3)(ii) excepts goods classified in subheading 6307.90, HTSUS, from its application. Customs must now examine paragraph (c)(4) of section 102.21.

Paragraph (c)(4) of section 102.21 provides:

> Where the country of origin of a textile or apparel product cannot be determined under paragraph (c) (1), (2) or (3) of this section, the country of origin of the good is the

single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

It is the determination of this office that section 102.21(c)(4) confers origin on the style two Zeotrope nursing pad. The "most important assembly or manufacturing process" in the manufacture of the style two Zeotrope nursing pad occurs in China. 19 C.F.R. 102.21(c)(4).

The woven cotton fabric manufactured in China is the most important part of the style two nursing pad. This aspect of the style two nursing pad is capable of functioning as a complete nursing pad, as is reflected by the fact that the style one nursing pad only consists of woven cotton fabric. The coated nylon fabric made in the United States provides the style two nursing pad with an added feature, a moisture-resistant barrier, not available in the style one nursing pad, but it is not essential to the functioning of the article.

It is additionally the determination of the Custom Service that the cutting, joining and sewing that occurs in Canada is outweighed in importance by the cotton fabric-making process that occurs in China. This position, resting the country of origin determination on the fabric-making process, rather than the assembly process, carries out the intent and purpose of Congress in the enactment of textile and apparel rules of origin in section 334 of the Uruguay Round Agreements Act. *See* HQ 958972 (April 9, 1996).

Holding:

Headquarters Ruling Letter 961238 (April 21, 1998) is modified.

The country of origin of the style one Zeotrope Holdings, Ltd. nursing pad, composed entirely of woven cotton fabric formed in China that is cut, joined together and edge-sewn in Canada, is China.

The country of origin of the style two Zeotrope Holdings, Ltd. nursing pad, composed of woven cotton fabric formed in China, woven nylon fabric with a polyurethane coating formed in the United States and that is cut, joined together and edge-sewn in Canada, is China.

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

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, July 24, 2002.

CLA–2 RR:CR:TE 965711 jsj
Category: Classification
Tariff No. 6307.90.9889

MS. ESTELLE LEE
PRESIDENT, TL CARE
P.O. Box 77087
San Francisco, CA 94107

Re: Nursing Pads; Breast Pads; Paper Absorbent Component; Textile Wadding Absorbent Component; Woven Textile Fabric Absorbent Component; Nonwoven Textile Fabric, But Not Wadding Absorbent Component; General Rules of Interpretation 1 and 3(b); Essential Character; Headings 4818, 5601 and 6307, HTSUS; Not Clothing Accessories, Heading 6217, HTSUS; Woven Cotton Absorbent Component; Subheading 6307.90.9889, HTSUSA.

DEAR MS. LEE:

The purpose of this correspondence is to respond to your request dated April 25, 2002. The correspondence in issue requested a binding classification ruling of the merchandise described as a "nursing pad."

This ruling is being issued subsequent to the following: (1) A review of your submission dated April 25, 2002; and (2) An examination of the sample that accompanied your ruling request.

Facts:

The article in issue, identified as a nursing pad, is designed to be placed in the brassiere of nursing mothers to absorb excess milk. It is circular or slightly conical in shape and measures five (5) inches in diameter. The nursing pad is composed entirely of four (4) layers of 100 percent woven cotton fabric stated to be flannel. No other materials form a part of this article. The circumference is sewn.

This merchandise is also commonly referred to as "breast pads." The Customs Service, for convenience purposes, will refer to this item as a nursing pad.

The Customs Service is advised that the country of manufacture is China.

Issue:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described nursing pad composed entirely of woven cotton fabric[1]?

Law and Analysis

The federal agency responsible for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is the U.S. Customs Service.[2] The Customs Service, in accordance with its legislative mandate, classifies imported merchandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.[3]

General Rule of Interpretation 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." *General Rule of Interpretation 1*. General Rule of Interpretation 1 further states that merchandise which cannot be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation, provided the HTSUSA chapter headings or notes do not require otherwise. According to the Explanatory Notes (EN), the phrase in GRI 1, "provided such headings or notes do not otherwise require," is intended to "make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount." *General Rules for the Interpretation of the Harmonized System, Rule 1, Explanatory Note (V)*.

The Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. *See* Joint Explanatory Statement *supra* note 2, at 549. The Explanatory Notes, although neither legally binding nor dispositive of classification issues, do provide commentary on the scope of each heading of the HTSUS. The EN's are generally indicative of the proper interpretation of the headings. *See* T.D. 89–80, 54 Fed. Reg. 35127–28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F. 3rd 1098, 1109 (Fed. Cir. 1995).

The Customs Service, observing the dictates of GRI 1, to classify merchandise according to the terms of the headings and the section and chapter notes, has encountered significant difficulty in the classification of nursing pads. Nursing pads, as previously explained, are items used by nursing mothers to absorb excess breast milk during lactation. Nursing pads may be used for other purposes, but it is Customs conclusion that any use of nursing pads other than by nursing mothers to absorb excess milk is fugitive.

The difficulty encountered by Customs in classifying this merchandise stems from two facts: (1) Nursing pads are not designated *eo nomine* in the tariff schedule; and (2) The manufacturers of nursing pads utilize different materials, primarily different absorbent material, to construct their products. Customs commenced the classification of this merchandise with this understanding.

Customs survey of nursing pads indicates that they are manufactured utilizing primarily four types of absorbent material: (1) Paper and/or paper pulp; (2) Textile wadding;

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[1] All aspects of this article are composed of woven cotton fabric, including the absorbent layer.

[2] *See* 19 U.S.C. 1500 (West 1999) (providing that the Customs Service is responsible for fixing the final appraisement, classification and amount of duty to be paid); *See also* Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 100–576, at 549 (1988) *reprinted in* 1988 U.S. Code Cong. and Adm. News 1547, 1582 [hereinafter Joint Explanatory Statement].

[3] *See* 19 U.S. C. 1202 (West 1999); *See generally, What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at www.customs.gov, search "Importing & Exporting" and then "U.S. Customs Informed Compliance Publications."

(3) Woven textile fabrics; and (4) Nonwoven textile fabrics that are not wadding. It is not Customs intention to suggest that this list is exclusive. Other absorbent materials may be used in the manufacture of nursing pads either presently or in the future. The four primary types of absorbent material addressed above, for the purposes of this ruling letter, are not in composition with any type of super absorbent chemical compound.

Since the tariff schedule does not designate nursing pads, *eo nomine*, that is by name, in any of the headings, Customs has determined that it is not possible to classify all nursing pads in a single heading. Failing to confirm a single heading into which all nursing pads may be properly classified, Customs re-examined the GRI's, gave careful thought to the ruling requests and protests currently pending in the Office of Regulations and Rulings and reviewed the classification history of this line of merchandise. The decision was made, pursuant to the requirements of the GRI's, to classify each article on its own merits.

The Customs Service, pursuant to the principles of "informed compliance" and "shared responsibilities" set forth in the Customs Modernization Act,[4] has determined that in order for the trade community to understand Customs reasoning, it is important to address in this ruling letter Customs thought process with regards to the classification of nursing pads. It is Customs judgment because of the different ways in which different types of nursing pads are manufactured that providing comprehensive analysis of the classification of the different types of nursing pads will result in a more uniform and correct classification of this merchandise.

Simply addressing TL Care's nursing pad would meet Customs legal obligation, but that would only inform Customs field personnel and the trade of the classification of one type of nursing pad. Only a complete and thorough discussion of the classification of the different types of nursing pads can result in the uniformity sought by Customs and the accurate classification of merchandise required of the trade.

The Customs Service will initially provide analysis of the headings that the agency has concluded are relevant to the classification of nursing pads. This ruling letter will conclude with the classification of the TL Care nursing pad.

It is the understanding of the Customs Service, as previously stated, that there are four primary types of nursing pads based on absorbent properties. The primary types of nursing pads include those with the following types of absorbent material: (1) Paper; (2) Textile wadding; (3) Woven textile fabrics; and (4) Nonwoven textile fabrics that are not wadding. Customs will address the classification, at the heading level, of nursing pads with each of these absorbent materials.

It is important to note that nursing pads are generally not composed entirely of the same material that provides the nursing pad with its absorbent capability. Although Customs focus, as will be addressed subsequently, will be on the material or substance that provides a nursing pad with its absorbent capability, proper application of the GRI's mandate that Customs not ignore the other materials or substances which make-up a particular style of nursing pads.

Nursing Pads of Heading 4818

Nursing Pads Composed Entirely ol Materials Enumerated in Heading 4818

Commencing the classification of nursing pads composed entirely of paper pulp, paper, cellulose wadding or webs of cellulose fibers, these nursing pads, in accordance with the dictates of GRI 1, are classified according to the terms of heading 4818, HTSUS. Heading 4818, HTSUS, provides for the classification of:

> Toilet paper and similar paper * * * of a kind used for household or sanitary purposes; * * * *diapers, tampons, bed sheets and similar household, sanitary or hospital articles*, articles of apparel and clothing accessories, of paper pulp, paper, cellulose wadding or webs of cellulose fibers. (Emphasis added).

Explanatory Note 48.18 provides that heading 4818, HTSUS, addresses the classification of "household, sanitary or other hospital articles * * * of paper pulp, paper, cellulose wadding or webs of cellulose fibres." *Explanatory Note 44.18*. Sanitary articles, in accordance with the definition of "sanitary" in Webster's New Collegiate Dictionary are articles "of or relating to health." *Webster's New Collegiate Dictionary*, G. & C. Merriam Company

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[4] *See generally* North American Free Trade Implementation Act, Pub. L. 103–183, 107 Stat. 2057 (1993); *See also* Customs Modernization and Informed Compliance Act: Hearing on H.R. 3935 Before the House Comm. on Ways and Means, Subcomm. On Trade, 102nd Cong. 91 (1992) (statement of Carol Hallett, Commissioner, U. S. Customs Service) "Customs must do a better job of informing the trade community of how Customs does business; and the trade community must do a better job to assure compliance with U. S. trade laws."

(1977). It is the judgment of this office that nursing pads, designed to absorb excess milk from nursing mothers, are sanitary articles for the purposes of the tariff schedule and are similar to diapers and tampons, the sanitary articles designated *eo nomine* in heading 4818, HTSUS.

It is, therefore, Customs determination that nursing pads composed entirely of paper pulp, paper, cellulose wadding or webs of cellulose fibers are properly classified, pursuant to GRI 1, in heading 4818, HTSUS.

Nursing Pads with Components of Paper Pulp, Paper, Cellulose Wadding or Webs of Cellulose Fibers and of Textile Fabrics

Nursing pads for which the absorbent capability is provided by paper pulp, paper, cellulose wadding or webs of cellulose fibers, but which are not composed entirely of the materials enumerated in heading 4818, may not be classified pursuant to GRI 1 in heading 4818, HTSUS. These nursing pads generally have an absorbent inner layer or layers composed of paper pulp, paper, cellulose wadding or webs of cellulose fibers, but the outer layer or layers, those layers not primarily designed and intended to provide the article with its absorbent property, may generally be composed of one or more textile fabrics. The outer layer or layers may be, among other fabrics, lace, nonwoven fabrics or woven fabrics.

Nursing pads with an outer component of a textile fabric or fabrics and with an inner absorbent component of paper pulp, paper, cellulose wadding or webs of cellulose fibers may not be classified pursuant to GRI 1. A review of the terms of the headings of the HTSUS and the relevant section and chapter notes does not establish a heading into which an article of this nature may be properly classified, pursuant to GRI 1.

Having determined that General Rule of Interpretation 1 does not resolve this classification matter, the Customs Service reviewed GRI 2. Since nursing pads composed of an outer component of textile fabrics and with an inner absorbent component of the materials enumerated in heading 4818, HTSUS, that is, paper pulp, paper, cellulose wadding or webs of cellulose fibers, are not incomplete, unfinished, unassembled or disassembled articles, GRI 2(a) does not offer assistance. General Rule of Interpretation 2(b) does provide classification guidance.

General Rule of Interpretation 2(b) provides, in part, that "[t]he classification of goods consisting of more than one material or substance shall be classified according to the principles of rule 3." Since the nursing pad subject to this discussion is composed of both a textile fabric component and a component of materials enumerated in heading 4818, HTSUS, it is composed of more than one material and resort must be had to GRI 3.

The initial sentence of General Rule of Interpretation 3 provides that "[w]hen, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be * * *" according to GRI 3(a), (b) or (c). The nursing pads subject to this discussion are, *prima facie*, classifiable in two headings. They are classifiable as "made up articles" of heading 6307, HTSUS, because of the textile fabric component and also as an article of heading 4818, HTSUS, because of their similarity to the *eo nomine* articles and composition of paper pulp, paper, cellulose wadding or webs of cellulose fibers.

General Rule of Interpretation 3(a) states that "when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods * * * those headings are to be regarded as equally specific in relation to the goods, even if one of them gives a more complete or precise description of the goods." The nursing pad subject to this discussion is a composite good[5] and the headings under classification consideration each refer to only part of the materials in the good. Customs will, for that reason, turn to GRI 3(b).

General Rule of Interpretation 3(b) provides, in part, that "composite goods * * * made up of different components * * * which cannot be classified by reference to 3(a), shall be classified as if they consisted of the * * * component which gives them their essential character, insofar as this criterion is applicable." The GRI's do not provide a definition for the phrase "essential character," but the EN's suggest an illustrative list of factors to consider. Explanatory Note Rule 3(b) (VIII) states that the factors that may be relevant to the determination of "essential character" "will vary between different kinds of goods," but may include the nature of the material or component, its bulk, its quantity, its weight, its value

[5] *See generally General Rules for the Interpretation of the Harmonized System, Rule 3(b) Explanatory Note (IX)* (providing, in part, that composite goods include goods made up of different components in which "the components are attached to each other to form a practically inseparable whole").

or the role played by the constituent material in relation to the use of the good. *General Rules for the Interpretation of the Harmonized System, Rule 3 (b) Explanatory Note (VIII).*

It is the conclusion of the Customs Service that the absorbent component composed of a material enumerated in heading 4818, HTSUS, is the component that gives the nursing pad its essential character. The absorbent material component plays the greatest role in the nursing pad, the absorption of excess milk during lactation. It is also the component that provides the nursing pad with its greatest bulk.

It is, therefore, Customs determination that nursing pads composed of an outer component of a textile fabric or fabrics and with an inner absorbent component of paper pulp, paper, cellulose wadding or webs of cellulose fibers are properly classified, pursuant to GRI 3(b), in heading 4818, HTSUS, as a similar sanitary article.

Nursing Pads of Textile Wadding—Heading 5601

Composed Entirely of Textile Wadding

Commencing the classification of nursing pads composed entirely of textile wadding, these nursing pads, pursuant to GRI 1, are properly classified in heading 5601, HTSUS. Heading 5601, HTSUS, provides for the classification of "Wadding of textile materials and articles thereof; textile fibers, not extending 5 mm in length (flock), textile dust and mill neps."

Wadding, as described by the EN's is "made by superimposing several layers of carded or air-laid textile fibres one on the other, and then compressing them in order to increase the cohesion of the fibres." *Explanatory Note 56.01(A).* It is noted that in order for an article to be wadding, the fibers must be readily separable, such as is possible with cotton balls frequently found in medicine bottles. *See Explanatory Note 56.01(A).*

Heading 5601, HTSUS, provides for the classification of articles of "[w]adding of textile materials." The Explanatory Notes reinforce the classification of nursing pads composed entirely of textile wadding in heading 5601, HTSUS. Explanatory Note 56.01(A)(2) sets forth that "[s]anitary towels and tampons, napkins (diapers) and napkin liners for babies and similar sanitary articles consisting of wadding, whether or not with knitted or loosely woven open-work covering" are classified in heading 5601, HTSUS. Customs, as previously addressed, has concluded that nursing pads are similar to sanitary articles.

It is, therefore, Customs determination that nursing pads composed entirely of textile wadding are properly classified, pursuant to GRI 1, in heading 5601, HTSUS, as articles of wadding of textile materials.

Nursing Pads with Components of Textile Wadding and of Textile Fabrics

Nursing pads for which the absorbent capability is provided by textile wadding, but which are not composed entirely of textile wadding, may not be classified pursuant to GRI 1 in heading 5601, HTSUS. These nursing pads generally have an absorbent inner component of textile wadding, but also have outer components, not primarily designed and intended to provide the article with its absorbent property, composed of one or more textile fabrics. The outer components may be, among other fabrics, lace, nonwoven fabrics that are not wadding or woven fabrics.

Nursing pads composed of an outer component of textile fabric and with an inner absorbent component of textile wadding may not be classified pursuant to GRI 1. A review of the terms of the headings of the HTSUS and the relevant section and chapter notes does not establish a heading into which an article of this nature is properly classifiable, pursuant to GRI 1.

Having determined that General Rule of Interpretation 1 does not resolve this classification matter, the Customs Service reviewed GRI 2. Since nursing pads composed of an outer component of textile fabrics and an inner absorbent component of textile wadding are not incomplete, unfinished, unassembled or disassembled articles, GRI 2(a) does not offer assistance. General Rule of Interpretation 2(b) does provide classification guidance.

General Rule of Interpretation 2(b) provides, in part, that "[t]he classification of goods consisting of more than one material or substance shall be classified according to the principles of rule 3." Since the nursing pad subject to this discussion is composed of both textile fabrics and textile wadding, it is composed of more than one material and resort must be had to GRI 3.

The initial sentence of General Rule of Interpretation 3 provides that "[w]hen, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be * * *" according to GRI 3(a), (b) or (c). The nursing pads subject to this discussion are, *prima facie*, classifiable in two headings. They are

classifiable as "made up articles" of heading 6307, HTSUS, because of the textile fabric component and also as an article of "[w]adding of textile materials" of heading 5601, HTSUS, because of the textile wadding component. *See* Headings 5601 and 6307, HTSUS.

General Rule of Interpretation 3(a) states that "when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods * * * those headings are to be regarded as equally specific in relation to the goods, even if one of them gives a more complete or precise description of the goods." The nursing pad subject to this discussion is a composite good and the headings under classification consideration each refer to only part of the materials in the good. Customs will, for that reason, turn to GRI 3(b).

General Rule of Interpretation 3(b) provides, in part, that "composite goods * * * made up of different components * * * which cannot be classified by reference to 3(a), shall be classified as if they consisted of the * * * component which gives them their essential character, insofar as this criterion is applicable." The GRI's do not provide a definition for the phrase "essential character," but the EN's suggest an illustrative list of factors to consider. Explanatory Note Rule 3(b) (VIII) states that the factors which may be relevant to the determination of "essential character" "will vary between different kinds of goods," but may include the nature of the material or component, its bulk, its quantity, its weight, its value or the role played by the constituent material in relation to the use of the good. *General Rules for the Interpretation of the Harmonized System, Rule 3 (b) Explanatory Note (VIII).*

It is the conclusion of the Customs Service that the inner absorbent component composed of textile wadding is the component that gives the nursing pad its essential character. The absorbent component plays the greatest role in the nursing pad, the absorption of excess milk during lactation. It is also the component that provides the nursing pad with its greatest bulk.

It is, therefore, Customs determination that nursing pads composed of an outer component of textile fabrics and with an inner absorbent component of textile wadding are properly classified, pursuant to GRI 3(b), in heading 5601, HTSUS, as articles of wadding of textile materials.

Nursing Pads of Woven Fabric or of Nonwoven Fabric, But Not Wadding—Heading 6307

Heading 6307, HTSUSA, a residual heading, provides for the classification of "Other made up articles, including dress patterns." It is Customs determination, pursuant to GRI 1, that heading 6307, HTSUSA, and no other heading, provides for the classification of nursing pads composed entirely of woven textile fabrics or of nonwoven textile fabrics that are not wadding.[6]

The expression "made up," as used in heading 6307, HTSUSA, is defined in Section XI, note 7. "Made up," pursuant to the section note, means articles,

> (a) Cut otherwise than into squares or rectangles;
> (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);
> (c) Hemmed or with rolled edges, or with a knotted fringe at any of the edges, but excluding fabrics the cut edges of which have been prevented from unravelling by whipping or by other simple means;
> (d) Cut to size and having undergone a process of drawn thread work;
> (e) Assembled by sewing, gumming or otherwise (other than piece goods consisting of two or more lengths of identical material joined end to end and piece goods composed of two or more textiles assembled in layers, whether or not padded); or
> (f) Knitted or crocheted to shape, whether presented as separate items or in the form of a number of items in the length.

The Explanatory Notes to heading 6307, HTSUSA, indicate that this heading is intended to include made up articles of any textile material, provided the articles are **"not included** more specifically in other headings of Section XI or elsewhere in the Nomenclature." *Explanatory Note 63.07*. Explanatory Note 63.07 further provides that made up ar-

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[6] A nonwoven textile fabric may upon initial examination appear to be wadding. If the textile fibers are not "readily separable," the material is not wadding, but rather a nonwoven textile fabric.

ticles include "[s]anitary towels **(excluding** those of **heading 56.01)**.[7]" *Explanatory Note 63.07 (14)*. The EN's do not define "sanitary towels," but a review of the Explanatory Notes to heading 5601, HTSUS, suggests that sanitary towels are similar to "[s]anitary * * * tampons, napkins (diapers) and napkin liners for babies and similar sanitary articles * * *." *Explanatory Note 56.01(A)(3)*. These sanitary articles are similar to those addressed in the analysis of heading 4818, HTSUS. The reasoning set forth concerning sanitary articles of heading 4818, HTSUS, is equally applicable to sanitary towels and articles of heading 6307, HTSUS.

It is, therefore, Customs determination that nursing pads composed entirely of woven textile fabrics or of nonwoven textile fabrics that are not wadding are not included more specifically elsewhere in the schedule, that they are described by section XI, note 7 and are properly classified at the heading level in heading 6307, HTSUS. Sanitary towels referenced in the Explanatory Notes, which Customs notes is not a term routinely employed in the United States, are a type of sanitary article. Nursing pads, as addressed previously, are sanitary articles.

Clothing Accessories and Heading 6217

The Customs Service has previously issued ruling letters classifying nursing pads, without regard to the material or substance that afforded the article its absorbent capability, in heading 6217, HTSUS. Heading 6217, HTSUS, provides, in part, for the classification of "Other made up *clothing accessories* * * *." (Emphasis added). Customs has now determined, subsequent to an exhaustive review of the tariff schedule and the Explanatory Notes, that nursing pads are not clothing accessories and should not be classified in heading 6217, HTSUS.

Customs conclusion that nursing pads were clothing accessories was based on a review of the Explanatory Notes and the decision that nursing pads are "accessories," that is, that they are secondary or subordinate in importance to clothing articles, adding to the beauty, convenience and effectiveness of the article. It is now Customs determination that nursing pads are not "accessories" and that Explanatory Note 62.17, when read in its entirety, does not support the classification of nursing pads in heading 6217, HTSUS.

Explanatory Note 62.17 lists twelve categories of articles that should be classified as clothing accessories, or as parts of garments or clothing accessories. The items enumerated in EN 62.17 include: dress shields; shoulder or other pads; belts of all kinds (including bandoliers) and sashes; muffs; sleeve protectors; sailor's collars; epaulettes and brassards; labels, badges, emblems, "flashes" and the like; frogs and lanyards; separately presented removable linings for raincoats and similar garments; pockets, sleeves, collars, collarlettes, wimples, fallals of various kinds, cuffs, yokes, lapels and similar items; and stockings, socks and sockettes.

Customs had previously placed considerable emphasis on the similarities between dress shields and shoulder pads, and nursing pads. It is now the determination of this office that Customs should not focus on only dress shields and shoulder pads when attempting to draw analogies to nursing pads, but must take into consideration all of the items listed in the Explanatory Note.

Nursing pads, like dress shields, are worn in addition to the wearer's clothing and do protect the wearer's clothing from perspiration staining. Dress shields, unlike nursing pads, are principally intended to protect the wearer's clothing. While nursing pads will protect the wearer's brassiere and outer garment from possible staining, its primary use is to absorb excess milk, not protect the wearer's clothing, particularly the brassiere. Nursing mothers wear nursing brassieres for a limited period of time and concerns about staining are minimal. Customs notes that nursing pads are generally purchased from maternity stores or drug stores, where as dress shields are generally purchased in fabric stores.

Shoulder pads are designed and intended to complement the wearer's clothing and, unlike nursing pads, have no protective function. Customs, as previously discussed, has concluded that the use of nursing pads for any purpose other than the absorption of excess milk during lactation is fugitive. Should pads, in this regard, are not analogous to nursing pads.

A review of all of the items listed in EN 62.17 convinces Customs that nursing pads are not properly classified in heading 62.17, HTSUS. While nursing pads do have similarities

[7] The sanitary towels excluded from heading 6307, HTSUS, would be those with an absorbent component of textile wadding, the material of heading 5601, HTSUS, articles.

with dress shields and shoulder pads, particularly dress shields, Customs concludes that a fair and accurate interpretation of EN 62.17 necessitates that nursing pads be compared to all of the items listed. When the features and uses of nursing pads are weighted against the features and uses of all of the items enumerated in EN 62.17, it is evident to Customs that nursing pads are not sufficiently analogous and should not be classified in heading 6217, HTSUS. Nursing pads have little or nothing in common with items such as belts, sashes muffs, sleeve protectors, sailor's collars, epaulettes, brassards, labels, badges, emblems, "flashes," frogs, lanyards, removable linings for raincoats, pockets, sleeves, collars, collarlettes, wimples, fallals, cuffs, yokes, lapels, stockings, socks and sockettes.

The Customs Service is aware of HQ 963488 (May 2, 2000) and NY D82853 (Oct. 16, 1998) classify similar nursing pads as clothing accessories in heading 6217, HTSUS. Customs is re-examining the classification of this merchandise in heading 6217, HTSUS. If a decision is made to reclassify the merchandise in the identified ruling letters, the Customs Service will proceed in accordance with 19 U.S.C. 1625(c).

TL Care's Nursing Pad of Woven Cotton Fabric

Commencing classification of the TL Care nursing pad, in accordance with the dictates of GRI 1, the Customs Service examined the headings of the HTSUSA. Heading 6307, HTSUSA, a residual heading, provides for the classification of "Other made up articles, including dress patterns." It is Customs determination, as previously set forth in this ruling letter, that heading 6307, HTSUSA, and no other heading, provides for the classification of nursing pads composed entirely of woven cotton fabric.

It is Customs determination that nursing pads composed entirely of woven cotton fabric are not included more specifically elsewhere in the schedule and that they are articles assembled by sewing, gumming or otherwise as describe by section XI, note 7 (e). Nursing pads, as previously resolved, are sanitary articles similar to sanitary towels.

Continuing the classification of TL Care's nursing pad composed solely of four layers of 100 percent woven cotton fabric, the article is classified in subheading 6307.90.9889, HTSUSA. Subheading 6307.90.9889, HTSUSA, provides for the classification of:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other;
	Other:
6307.90.9889	Other.

Holding:

The TL Care nursing pad, composed entirely of woven cotton fabric, is classified in subheading 6730.90.9889, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is seven (7) percent, *ad valorem*.

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

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 18, 2002.

CLA–2 RR:CR:TE 965750 jsj
Category: Classification
Tariff No. 6307.90.9889

MR. OWEN HAIRSINE
ZEOTROPE HOLDINGS, LTD.
12993 80th Avenue
Surrey, British Columbia
Canada V3W 3B1

Re: Reconsideration and Revocation of NY C81609 (Nov. 19, 1997); Nursing Pads; Breast Pads; Woven Absorbent Material; Subheading 6307.90.9889, HTSUSA; HQ 965711 (July 24, 2002) Incorporated by Reference.

DEAR MR. HAIRSINE:

The purpose of this correspondence is to advise you that the Customs Service has reconsidered New York Ruling Letter C81609 (Nov. 19, 1997).

The Customs Service in New York Ruling Letter C81609 classified two nursing pads, one composed entirely of woven cotton fabric and the other composed of woven cotton fabric with an outer layer of polyurethane coated woven nylon fabric, in subheading 6217.10.9510, HTSUSA. The Customs Service has reviewed NY C81609 and determined that it is not correct.

Customs is revoking NY C81609. The nursing pads, one composed entirely of woven cotton fabric and the other composed of woven cotton fabric with an outer layer of polyurethane coated woven nylon fabric, are classified in subheading 6307.90.9889, HTSUSA. The reasoning and analysis addressing Customs decision is provided in this ruling letter.

Pursuant to section 625(c), Tariff Act of 1930, as amended, 19 U.S.C. 1625(c), notice of the proposed revocation of NY C81609 was published on August 14, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 33.

Facts:

The articles in issue are two styles of nursing pads.

Style one is composed solely of 100 percent woven cotton fabric. The fabric is cut into three pieces with triangular shapes and three pieces in the shape of half-moons.

Style two is identical to style one, with the exception that it has a breathable polyurethane coated woven nylon fabric on one side of the article. It is Customs understanding that it is the woven cotton fabric which provides this article with its absorbent capability.

Issue:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described nursing pads, one composed entirely of woven cotton fabric and the other composed of woven cotton fabric with an outer layer of polyurethane coated woven nylon fabric?

Law and Analysis

The Customs Service in Headquarters Ruling Letter 965711 (July 24, 2002) provided classification analysis, at the heading level for heading 6307, HTSUS, for nursing pads substantially similar to those in this ruling letter, composed entirely of woven cotton fabric and composed of woven cotton fabric with an outer layer of polyurethane coated woven nylon fabric. Heading 6307, HTSUS, a residual or basket provision, provides for the classification of "[o]ther made up articles, including dress patterns."

The legal reasoning and analysis addressing the classification, at the heading level, in heading 6307, HTSUS, of nursing pads composed entirely of woven cotton fabric and composed of woven cotton fabric with an outer layer of polyurethane coated woven nylon fabric set forth in HQ 965711 is incorporated into this ruling letter by reference. Headquarters Ruling Letter 965711 is attached to and made a part of this ruling letter.

Continuing the classification of Zeotrope Holdings' nursing pad, at the subheading level, Zeotrope's nursing pads composed entirely of woven cotton fabric and composed of woven cotton fabric with an outer layer of polyurethane coated woven nylon fabric are

classified in subheading 6307.90.9889, HTSUSA. Subheading 6307.90.9889, HTSUSA, provides for:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other;
	Other:
6307.90.9889	Other.

Holding:

New York Ruling Letter C81609 (Nov. 19, 1997) is revoked.

The Zeotrope Holdings, Ltd. nursing pads composed entirely of woven cotton fabric and composed of woven cotton fabric with an outer layer of polyurethane coated woven nylon fabric are classified in subheading 6307.90.9889, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty for subheading 6307.90.9889, HTSUSA, is seven (7) percent, *ad valorem*.

The legal reasoning and analysis of Headquarters Ruling Letter 965711 (July 24, 2002) is incorporated by reference. Headquarters Ruling Letter 965711 is attached to and made a part of this ruling letter.

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

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

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 18, 2002.

CLA–2 RR:CR:TE 963826 jsj
Category: Classification
Tariff No. 6307.90.9889

MS. CARLA CRAVALHO
HELLMANN INTERNATIONAL FORWARDERS, INC.
448 Grandview Drive
South San Francisco, CA 94080

Re: Reconsideration and Revocation of NY D82853 (Oct. 16, 1998); Nursing Pads; Breast Pads; Nonwoven Absorbent Material; Subheading 6307.90.9889, HTSUSA; HQ 965711 (July 24, 2002) Incorporated by Reference.

DEAR MS. CRAVALHO:

The purpose of this correspondence is to advise you that the Customs Service has reconsidered NY D82853 (Oct. 16, 1998) issued to you on the behalf of your client, Mantex Trading, Inc.

The Customs Service in New York Ruling Letter D82853 classified nursing pads with an initial layer of knit fabric, a second layer of a nonwoven fabric, a third layer, which provides the article with its absorbent capability, of a nonwoven polyester fabric and a fourth layer of a woven fabric in subheading 6217.10.9510, HTSUSA. The Customs Service has reviewed NY D82853 and determined that it is not correct.

Customs is revoking NY D82853 and reclassifying nursing pads with a knit component, nonwoven components and a woven component, in which the absorbent capability is provided by one of the nonwoven components, in subheading 6307.90.9889, HTSUSA. The reasoning and analysis addressing Customs decision is provided in this ruling letter and HQ 965711 (July 24, 2002) which is incorporated by reference.

Pursuant to section 625 (c), Tariff Act of 1930, as amended, 19 U.S.C. 1625(c), notice of the proposed revocation of NY D82853 was published on August 14, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 33.

Facts:

The article in issue, identified as a nursing pad, is designed to be placed in the brassiere of nursing mothers to absorb excess milk. Mantex's nursing pad is circular, four and one-fourth (4¼) inches in diameter and composed of four layers.

The initial layer, which will come into contact with the brassiere, is composed of 100 percent nylon lace. The second layer is a 100 percent nonwoven polyester fabric lining. The third layer, which affords the article its absorbent capability, is composed of 100 percent nonwoven polyester fabric. The fourth and final layer, which will come into contact with the wearer's skin, is composed of 100 percent woven cotton flannel fabric.

The Customs Service specifically notes that the nonwoven polyester fabric that affords the nursing pad its absorbent capability is not wadding.

The Customs Service is advised that the country of manufacture is China.

Issue:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described nursing pad with a knit component, nonwoven components and a woven component, in which the absorbent capability is provided by one of the nonwoven components?

Law and Analysis:

The Customs Service in Headquarters Ruling Letter 965711 (July 24, 2002) provided classification analysis, at the heading level, for a substantially similar nursing pad. Customs, in HQ 965711, discussed the classification of a nursing pad with an absorbent nonwoven fabric component and concluded that it should be classified in heading 6307, HTSUS. Heading 6307, HTSUS, a residual or basket provision, provides for the classification of "[o]ther made up articles, including dress patterns."

The legal reasoning and analysis addressing the classification, at the heading level, in heading 6307, HTSUS, of a nursing pad with multiple components, in which the absorbent capability is provided by a nonwoven component, set forth in HQ 965711 is incorporated into this ruling letter by reference. Headquarters Ruling Letter 965711 is attached to and made a part of this ruling letter.

The Customs Service is cognizant that HQ 965711 did not address the classification of nursing pads with knit textile fabric components. The reasoning applied in HQ 965711 regarding nursing pads with woven and nonwoven textile fabric components in which those components do not provide the nursing pads with their absorbent capability is, however, equally analogous.

Continuing the classification of the Mantex nursing pad, at the subheading level, Mantex's nursing pad with a knit component, nonwoven components and a woven component, in which the absorbent capability is provided by one of the nonwoven components, is classified in subheading 6307.90.9889, HTSUSA. Subheading 6307.90.9889, HTSUSA, provides for:

6307	Other made up articles, including dress patterns:
6307.90	Other:
	Other:
6307.90.98	Other;
	Other:
6307.90.9889	Other.

Holding:

New York Ruling Letter D82853 (Oct. 16, 1998) is, hereby, revoked.

The Mantex Trading, Inc. nursing pad with a knit component, nonwoven components and a woven component, in which the absorbent capability is provided by one of the nonwoven components, is classified in subheading 6307.90.9889, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty for subheading 6307.90.9889, HTSUSA, is seven (7) percent, *ad valorem*.

The legal reasoning and analysis of Headquarters Ruling Letter 965711 (July 24, 2002) is incorporated by reference. Headquarters Ruling Letter 965711 is attached to and made a part of this ruling letter.

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

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

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 18, 2002.

CLA–2 RR:CR:TE 964388 jsj
Category: Classification
Tariff No. 5601.10.2000

MS. JOANNA CHEUNG
HONG KONG ECONOMIC AND TRADE OFFICE
1520 18th Street, N.W.
Washington, DC 20036

Re: Reconsideration and Revocation of HQ 963488 (May 2, 2000); Nursing Pads; Breast Pads; Nonwoven Absorbent Material; Subheading 5601.10.2000, HTSUSA; HQ 965711 (July 24, 2002) Incorporated by Reference.

DEAR MS. CHEUNG:

The purpose of this correspondence is to advise you that the Customs Service has reconsidered Headquarters Ruling Letter 963488 (May 2, 2000). This reconsideration was undertaken subsequent to a request from counsel for Gerber Products Company (Gerber).

This reconsideration is being issued subsequent to the following: (1) A review of Gerber's submission dated August 17, 2001; (2) An examination of the sample nursing pad in issue in HQ 963488; and (3) A meeting conducted at Customs Headquarters on December 19, 2001, between a member of my staff and counsel for Gerber.

The Customs Service has reviewed HQ 963488 in which Gerber's nursing pad was classified in subheading 6217.10.9530, HTSUSA. It is Customs determination that HQ 963488 is not correct. Customs is revoking HQ 963488 and reclassifying the Gerber nursing pad.

Gerber's nursing pad, in which the absorbent capability is provided by textile wadding, is properly classified in subheading 5601.10.2000, HTSUSA. The reasoning and analysis addressing this change is provided in this ruling letter and in HQ 965711, which is incorporated by reference.

Pursuant to section 625 (c), Tariff Act of 1930, as amended, 19 U.S.C. 1625 (c), notice of the proposed modification of HQ 963488 was published on August 14, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 33.

Facts:

The article in issue, identified as a nursing pad, is designed to be placed in the brassiere of nursing mothers to absorb excess milk. Gerber's nursing pad is circular, four (4) inches in diameter and composed of three layers. The initial layer, which will come into contact with the brassiere, is composed of a nonwoven 100 percent polypropylene fabric. The middle layer, which affords the article its absorbent quality, is composed of a nonwoven polyester and rayon textile wadding. The third layer, which will come into contact with the wearer's skin, is composed of 100 percent woven cotton fabric.

The Customs Service is advised that the country of manufacture is Hong Kong.

Issue:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described nursing pad which has two outer layers, one of a nonwoven fabric and the other of a woven fabric, and an inner absorbent layer composed of a nonwoven polyester and rayon textile wadding?

Law and Analysis:

The Customs Service in Headquarters Ruling Letter 965711 (July 24, 2002) provided classification analysis, at the heading level, for substantially similar nursing pads. Customs, in HQ 965711, discussed the classification of nursing pads with components of textile wadding, woven textile fabric and nonwoven textile fabric, in which the absorbent capability is provided by the textile wadding, and concluded that they should be classified in heading 5601, HTSUS. Heading 5601, HTSUS, provides for the classification of "[w]adding of textile materials and articles thereof; textile fibers, not extending 5 mm in length (flock), textile dust and mill neps."

The legal reasoning and analysis addressing the classification, at the heading level in heading 5601, HTSUS, of nursing pads for which the absorbent capability is provided by textile wadding, set forth in HQ 965711, is incorporated into this protest decision by reference. Headquarters Ruling Letter 965711 is attached to and made a part of this protest decision.

Continuing the classification of Gerber's nursing pads, at the subheading level, Gerber's nursing pads with components of textile wadding, woven textile fabric and nonwoven textile fabric, for which the absorbent capability is provided by textile wadding, are classified in subheading 5601.10.2000, HTSUSA. Subheading 5601.10.2000, HTSUSA, provides for:

5601	Wadding of textile materials and articles thereof; textile fibers, not extending 5 mm in length (flock), textile dust and mill neps:
5601.10	Sanitary towels and tampons, diapers and diaper liners for babies and similar sanitary articles, of wadding:
5601.10.2000	Other.

Holding:

Headquarters Ruling Letter 963488 (May 2, 2000) has been reconsidered and is revoked.

The Gerber nursing pads for which the absorbent capability is provided by an inner layer of a nonwoven polyester and rayon textile wadding and the outer layers are a woven fabric and a nonwoven fabric are classified in subheading 5601.10.2000, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty for subheading 5601.10.2000, HTSUSA, is eight and two-tenths (8.2) percent, *ad valorem*.

The textile quota category for subheading 5601.10.2000, HTSUSA, is category 669.

The legal reasoning and analysis of Headquarters Ruling Letter 965711 (July 24, 2002) is incorporated by reference. Headquarters Ruling Letter 965711 is attached to and made a part of this ruling letter.

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

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

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO FILLING BOTTLES AS A MANUFACTURING PROCESS UNDER 19 U.S.C. 1313(a)

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to filling bottles as a manufacturing process under 19 U.S.C. 1313(a).

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 modify a ruling letter pertaining to manufacturing drawback under 19 U.S.C. 1313(a). Customs also intends to revoke any treatment previously accorded by Customs that is contrary to the position set forth in this notice. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before November 1, 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. Comments submitted may be inspected at U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Margaret McKenna, Duty and Refund Determination Branch (202) 572–8806.

SUPPLEMENTARY INFORMATION:

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, as amended (19 U.S.C. 1625(c)(1), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to a manufacturing process for drawback. Customs has determined to modify the ruling because one of the described processes is not covered by the statute. Although in this notice Customs is specifically referring to one ruling, HQ 227906, this notice covers any rulings on this process which may exist but have not been specifically identified that are contrary to the position set forth in this notice. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.,* ruling letter, internal advice memorandum or decision or protest review decision) on the process subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise that is contrary to the position set forth in this notice. This treatment may, among other reasons, be the result of the importer's reliance on a ruling 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 19 U.S.C. 1313 drawback provisions. 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 that is contrary to the position set forth 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.

In Headquarters Ruling Letter (HQ) 227906 dated May 27, 1998, set forth as "Attachment A" to this document, Customs held that the repackaging of imported toner that had been imported in bulk into smaller cartridges or bottles resulted in a commodity or article fit for a use for which it was otherwise not fit, thereby falling within the "letter and spirit" of "manufacture" for drawback purposes.

The manufacturing process was described as dumping the bulk toner into a hopper and through the use of a foot pedal, manually filling the bottles and cartridges. The end user of the bottles pours the contents from the bottle into the copier while the cartridges are placed into the copier, a tab is pulled out, and the contents are dumped into the copying machine. Some cartridges are removed from the copier while other cartridges remain in the machine.

Relying on the toner operation as being a manufacturing process the company submitted an application for a specific manufacturing drawback ruling in order to obtain drawback on the exportation of the toner cartridges and bottles. Upon further review Customs now intends to modify the ruling with respect to filling toner in bottles that are not specially made to be used in specific copying machines. It is now Customs position that these bottles would not qualify for manufacturing drawback under title 19, United States Code, section 1313(a) but rather would qualify as unused merchandise drawback under title 19, United States Code, section 1313(j).

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify HQ 227906 and revoke any treatment previously accorded by Customs to substantially identical operations that are contrary to the position set forth in this notice pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 229488 (see "Attachment B" to this document). Before taking this action, consideration will be given to any written comments timely received.

Dated: September 18, 2002.

WILLIAM G. ROSOFF,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 27, 1998.

DRA–2–01–RR:CR:DR 227906 SMC
Category: Drawbaclc

MR. BILL SMITH
CARGO BROKERS INTERNATIONAL, INC.
P. O. Box 45427
Atlanta, GA 30320

Re: Drawback; Manufacture or Production; 19 U. S.C. 1313(a); Unused merchandise; 19 U.S.C. 1313(j); *Anheuser-Buich v. United States*; *United States v. International Paint Co.*

DEAR MR. SMITH:

This is in response to your letter of February 16, 1998, requesting a ruling, on behalf of your client ITM Corporation, concerning the applicability of the drawback laws to a processing involving copy machine toner.

Facts:

Your client imports toner for use in copy machines. The toner is imported in bulk containers, repacked into smaller cartridges or bottles, and then sold domestically or internationally. The process involves the dumping of the bulk toner into a hopper and through the use of a foot pedal, manually filling the bottles and cartridges. The toner that is exported is in the "same condition" as upon import.

The end user of the bottles of toner pours the contents from the bottle into the copier. The cartridges are actually placed into the copier, a tab is pulled out, and the contents are dumped into the copying machine. In most cases the cartridge is removed from the copier, although in a few cases the cartridges may remain in the machine but they serve no other purpose. This process is used to help prevent spillage of the toner.

Issue:

Does the processing of the toner as described constitute a "non-use" of that merchandise thereby enabling recovery of drawback under 19 U.S.C. 1313(j)(1) and (3); or is the processing a manufacture or production under 19 U.S.C. 1313(a)?

Law and Analysis:

19 U.S.C. § 1313, as amended by section 632(a) of the North American Free Trade Agreement (NAFTA) Implementation Act of 1993, provides in pertinent part that (a) "[u]pon the exportation * * * of articles manufactured or produced in the United States with the use of imported merchandise * * *, the full amount of duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties * * *".

In C.S.D. 79–40, Customs stated that "[m]anufacture or production is defined for drawback as the process or processes which, through labor and manipulation, change or transform an article or articles into a new and different article having a distinctive name, character, or use." *See*, for example, *Anheuser-Busch Brewing Association v. United States,* 207 U.S. 556 (1907). It has been held that if an operation renders a commodity or article fit for use for which it was otherwise not fit, the operation falls within the "letter and spirit" of"manufacture." *United States v. International Paint Co., Inc.,* 35 C.C.P.A. 87, C.A.D. 376 (1948).

19 U.S.C. § 1313(j)(1) provides in part that if imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation, and is before the close of the 3-year period beginning on the date of importation either exported or destroyed under customs supervision and is not used within the United States before such exportation or destruction; then upon such exportation or destruction 99 percent of the amount of each duty, tax, or fee so paid shall be refunded as drawback.

19 U.S.C. §1313(j)(3) provides in pertinent part that "[t]he performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), *not amounting to manufacture or production for drawback purposes* * * * shall not be treated as a use of that merchandise. * * *". (emphasis added)

The processing of the toner as described would appear to be a repacking operation specifically allowed under §1313(j)(3) as a "non-use" of merchandise *as long as it does not amount to a manufacture or production.* This office previously considered an identical operation involving copy machine toner. Headquarters Ruling 207865 dated June 25, 1977, addressed an issue involving toner that was imported in drums of 180 liters which was then rebottled into 600 milliliter bottles and packaged for retail sale. The retail bottles fit commercial copy machines, whereas the imported drums were not. It was held that since the rebottling of the bulk toner into consumer sized containers resulted in a retail preparation suitable for immediate consumption thus changing the use and character of the merchandise, the operation constituted a manufacture or production within the meaning of the drawback statute.

The same ruling that addressed the toner operation also held that bulk sugar purchased in #100 bags which was placed in hoppers of packaging machines and then inserted by the machine into individual portion sized– packets of one teaspoon each for retail sale also constituted a manufacture or production under the drawback statute.

Holding:

The toner operation results in a commodity or article fit for a use for which it was otherwise not fit, thereby falling within the "letter and spirit" of"manufacture" for drawback purposes and therefore making l9 U.S.C. 1313(a) applicable.

WILLIAM G. ROSOFF,
Chief,
Duty & Refund Determination Branch.

[ATTACHMENT B]

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

DRA–2–01–RR:CR:DR 229488 MM
Category: Drawback

MR. GEORGE M. KELLER
CUSTOMS ADVISORY SERVICES, INC.
1003 Virginia Avenue
Suite 200
Atlanta, GA 30354

Re: Drawback; Manufacture or Production; 19 U.S.C. 1313(a); Unused Merchandise; 19 U.S.C. 1313(j); HQ 227906; Toner Imported in Bulk; 19 U.S.C. 1625; Ruling Modification under Section 1625(c).

DEAR MR. KELLER:

This is in reference to an application for a specific manufacturing drawback ruling filed on behalf of International Trade & Manufacturing Corporation d/b/a ITM, Inc. covering toner cartridges and bottles manufactured under title 19, United States Code, section 1313(b) with the use of dry bulk toner. The application was submitted pursuant to Headquarters Ruling Letter (HQ) 227906 issued to ITM Corporation (ITM) on May 27, 1998 concerning the applicability of drawback under section 1313(a) on toner imported in bulk containers and repackaged into cartridges or bottles.

We held in HQ 227906 that the operation of repackaging imported toner into cartridges and bottles resulted in a commodity or article fit for a use for which it was otherwise not fit, therefore making 19 U.S.C. 1313(a) applicable. Upon review of HQ 227906 Customs has determined that repackaging imported bulk toner into bottles of toner that are not made to fit a particular copy machine but are merely used by the operator to physically pour the toner into the machine does not produce an article fit for a use for which it was otherwise not fit. The ruling is to be modified for the reasons set forth below.

Facts:

ITM imports bulk toner for use in copy machines. The bulk toner is received by ITM in 60, 80 and 100 kilogram drums or barrels to be conveyed to smaller containers used in specific copy machines. The operation involves machines that take the bulk product and by use of vacuum and screw augers convey the toner to the appropriate container. The toner is vacuumed from barrel or drum and transferred to a holding tank. An auger then screws toner down a tube and deposits it into the proper container.

Various shapes and sizes of toner containers are used in copy machines. The toner containers are known as toner kits, bottles, tubes, cartridges, consumables, containers or starter kits. They all refer to the same product, a container which holds toner which is inserted into the machine to make copies.

There are four main ways of conveying the toner to the machine:

1. A sealed container of toner which when the seal is removed is physically poured into the toner hopper or receptacle in the machine by the operator. The container is then discarded. This material is stored in the machine until it calls for the addition of more toner to be added to the developer section. Bottle type containers are used in this method by the operator to pour the toner into the machine.
2. A sealed container of toner which is snapped in place on the toner receptacle and has a foam rubber insert. The operator then pulls the seal on the toner container and the toner is dumped or gravity fed into the toner hopper or receptacle which is part of the machine. The container is then discarded. Either cartridge or bottle type containers that are specifically engineered to be used with particular model copiers are used in this method to dump the product into the machine receptacle.
3. A container of toner which stays in the copier until empty and dispenses the toner when the machine requires the addition of more toner. These containers usually use a spiral groove on the container to gradually move the toner from container to the toner receptacle when needed. Bottle type containers that are specifically engineered to be used with particular model copiers are used in this method to dispense the toner slowly when the machine requires additional toner.
4. A container of toner which stays in the copier until empty and dispenses the toner through a mechanical action produced by the machine through a gear connection to

the toner container which moves a paddle or auger to shove the toner into the machine receptacle. Cartridge type containers that are specifically engineered to be used with particular model copiers are used in this method to dispense the toner when the machine requires additional toner.

Issue:

Whether the bottled toner which is physically poured into the machine as described in item 1 above qualifies for manufacturing drawback under 19 U.S.C. 1313(a).

Law and Analysis:

Drawback is authorized under the provisions of title 19, United States Code, section 1313(a) upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise. The Customs Regulations 19 CFR 191.2(q), define a manufacture or production as:

1. A process, including, but not limited to, an assembly, by which merchandise is made into a new and different article having a distinctive "name, character or use"; or
2. A process, including, but not limited to, an assembly, by which merchandise is made fit for a particular use even though it does not meet the requirements of paragraph (q)(1) of this section.

Generally, in determining whether there has been a manufacture or production for drawback purposes, Customs has long used the criteria in the *Anheuser-Busch Brewing Association v. United States* 207 U.S. 566 (1908) case. Under that case, a manufacture or production is considered to have occurred when the merchandise under consideration is changed or transformed into a new and different article having a distinctive name, character, or use.

In HQ 227906 we held that the operation of filling various bottles and cartridges with imported bulk toner resulted in a commodity or article fit for a use for which it was otherwise not fit, thereby falling within the "letter and spirit" of "manufacture" for drawback purposes. It was stated that the end user of the bottles of toner would pour the contents from the bottle into the copier while the cartridges were actually placed into the copier allowing the contents to be dumped into the copying machine. This conclusion was based on a previous ruling HQ 207865 dated June 25, 1977 concerning toner imported in 180 liter drums which was rebottled into 600 milliliter bottles and packaged for retail sale. However, the retail bottles in this case were all made to fit commercial copy machines. It was held the rebottling of bulk toner into bottles that were intended to be used as part of the copier rather than as containers resulted in a retail preparation suitable for immediate consumption thus changing the use and character of the merchandise. The operation was said to constitute a manufacture or production within the meaning of the drawback statute.

In determining whether the end product would have been processed into a new and different article with a distinctive name, character or use we can look to the classification of the end use toner bottles and cartridges. In HQ 964351 Customs determined that toner cartridges and bottles like those described in items 2, 3 and 4 under the FACTS section that are made to fit specific copy machines whether they remain in the machines until they were empty of toner or are fitted onto the machine to refill the machine with toner are to be classified as parts or accessories of copying machines. The bottles of toner described in item 1 are not made to fit into or onto specific machines and would be considered containers of toner.

However, unused merchandise drawback is allowable under title 19, United States Code, section 1313(j) on imported merchandise which has been exported or destroyed under Customs supervision within 3 years of the date of importation and has not been used in the United States before such exportation or destruction. The term "unused merchandise" is not defined in the Customs Regulations. However, it has been determined that an article is used when it is employed for the purpose for which it was manufactured or when it is used in the manufacture or production of another article. Section 1313(j)(3) provides that the performance of certain operations or combination of operations (such as testing, cleaning, repacking, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), on the imported item, not amounting to a manufacturing or production for drawback purposes, will not be treated as a "use" of that merchandise. The toner described in item 1 under the FACTS section would qualify as unused merchandise drawback because it is merely bottled which does not amount to a manufacture or production for drawback purposes.

Holding:

Upon reconsideration of HQ 227906 we find that the toner in bottles as described in item 1 under the FACTS section which were not made to fit specific copying machines has not been changed in name, character or use and is therefore not eligible for manufacturing drawback under 19 U.S.C. 1313(a). However, we find such bottled toner is eligible for unused merchandise drawback under 19 U.S.C. 1313(j)(1).

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

REVOCATION OF RULING LETTER AND REVOCATION OF TARIFF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF LAMSTUDS

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

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

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 lamstuds under the Harmonized Tariff Schedule of the United States (HTSUS). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published on August 14, 2002, in Volume 36, Number 33, of the CUSTOMS BULLETIN. Customs received no comments in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Textile Classification Branch, at (202) 572–8814.

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 that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary com-

pliance 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 Title VI, notice proposing to revoke NY F84037, dated March 27, 2000, and to revoke any treatment accorded to substantially identical merchandise was published in the August 14, 2002, CUSTOMS BULLETIN, Volume 36, Number 33. Customs received no comments.

In NY F84037, we determined that the lamstud products were specially constructed for use as structural wood members in modular homes and that the manufacturing process provided extra stability and dedicated the product for use as builder's carpentry.

However, we now find that that the lamstud products are also used in non-structural applications and that the manufacturing process does not confer any specific dedication of the product. The lamstuds are properly classified in subheading 4421.90.9740, HTSUS, as general use lumber that has been edge-jointed and glued together.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been 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 identical transactions should have advised Customs during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its

agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY F84037, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964620, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

Dated: September 16, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 16, 2002.

CLA–2 RR:CR:TE 964620 RH
Category: Classification
Tariff No. 4421.90.9740

MR. JAMES F. MORGAN
SENIOR CONSULTANT
TRADE & REGULATORY SERVICES
PBB GLOBAL LOGISTICS
883–D Airport Park Road
Glen Burnie, MD 21061

Re: Revocation of NY F84037; Request for Tariff Classification Ruling on Lamstuds; Heading 4421; Heading 4418; Edge-glued lumber.

DEAR MR. MORGAN:

This is in reply to your letter of September 13, 2000, on behalf of IBL Inc., requesting a ruling on the classification of "lamstuds."

We have also reviewed New York Ruling Letter (NY) F84037, dated March 27, 2000, issued to you, on behalf of IBL, Inc., concerning the classification of lamstuds constructed for use as framework in modular homes. The manufacture of the wood in that case is identical to the manufacture of the wood in your current request.

In NY F84037, we held that the lamstuds were fabricated structural components of walls and ceilings, in the form of assembled goods, and were classifiable under subheading 4418.90.4040 of the Harmonized Tariff Schedule of the United States (HTSUS). However, after further review of the facts in both submissions we find that NY F84037 is incorrect. The correct classification of the lamstuds is under heading 4421, HTSUS, as other articles of wood.

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

revocation of NY F84037 was published on August 14, 2002, in Vol. 36, No. 33 of the CUSTOMS BULLETIN. Customs received no comments.

Facts:

You describe the manufacture of the lamstuds in both submissions as follows:

1. Each short piece of wood (1¾″ to 5″ wide) is cleared of defects, e.g., knots;
2. Each wood piece is cut to a precise length, e.g., 12″ to 36″ and put into a respective accumulator;
3. Each piece is double tongued and grooved on the edges;
4. The double tongued and grooved wood pieces are then pressed together forming edge-glued boards;
5. The edge-glued wood is now cut into boards, and the short pieces are finger-jointed to produce various lengths, then precision end-trimmed to the finished size desired.

In the instant ruling request, you state that the lamstuds will be used as door panels, floor joists, door lintels and ceiling rafters.

Issue:

What is the correct classification of the lamstuds?

Law and Analysis:

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI's taken in order.

Chapter 44, HTSUS, provides for, among other things, wood and articles of wood. This chapter is structured so that less processed wood appears at the beginning of the chapter followed by more advanced wood in later headings within the same chapter. Thus, for example, heading 4403, HTSUS, is a general provision for wood in the rough, whether or not stripped of bark or sapwood or roughly squared, and heading 4421, HTSUS, is a basket provision for more advanced articles of wood that cannot be classified elsewhere in the chapter.

Additionally, the Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System constitute the official interpretation of the nomenclature at the international level. The EN's are not legally binding. However, they do represent the considered views of classification experts of the Harmonized System Committee. It has therefore been the practice of the Customs Service to follow, whenever possible, the terms of the EN's when interpreting the HTSUS.

Heading 4418 provides for, among other things, builder's joinery and carpentry of wood. The EN to heading 4418, HTSUS, state in pertinent part:

> This heading applies to woodwork, including that of wood marquetry or inlaid wood, used in the construction of any kind of building, etc., in the form of assembled goods or as recognizable unassembled pieces (e.g., prepared with tenons, mortises, dovetails or other similar joints for assembly), whether or not with their metal fittings such as hinges, locks, etc.
>
> The term "joinery" applies more particularly to builders' fittings (such as doors, windows, shutters, stairs, door or window frames), whereas the term "carpentry" refers to woodwork (such as beams, rafters and roof struts) used for structural purposes or in scaffoldings, arch supports, etc., and includes assembled shuttering for concrete constructional work. * * *

In NY F84037, we determined that the lamstud products were specially constructed for use as structural wood members in modular homes and that the manufacturing process provided extra stability and dedicated the product for use as builder's carpentry.

However, the present ruling request shows that the lamstud products are also used in non-structural applications and that the manufacturing process does not confer any specific dedication of the product. We now find that the lamstud manufacturing process produces general use lumber that has been edge-jointed and glued together.

In Headquarters Ruling Letter (HQ) 088292, dated February 21, 1991, Customs held that a 4″ square hemlock post composed of edge-glued lumber, not otherwise worked, was

classified in heading 4421, HTSUS, as opposed to heading 4418, HTSUS. The ruling reads in pertinent part:

> The merchandise as imported is not sufficiently finished to constitute either joinery or carpentry * * * Both joinery and carpentry consist of articles which have been subject to some form of millwork or other working associated with a specific end product. The imported blanks may be suitable for any number of purposes, including manufacture into builders' joinery. However, at the time of importation that ultimate use is not evident from the condition of the goods. In our opinion they are not sufficiently advanced to be considered articles of heading 4418, HTSUS.

Moreover, Customs has consistently classified square cut edge-glued lumber, not otherwise worked than cut to size, in heading 4421, HTSUS. See NY 836623, dated March 2, 1989; NY 838097, dated April 6, 1989; NY 844916, dated September 20, 1989; and NY F88847, dated July 19, 2000.

We note that subheading 4418.90.20, HTSUS, provides for "Edge-glued lumber." However, the terms of a subheading at the 8-digit level such as this can only be read in light of the terms of the superior headings. In this case, the superior heading, 4418,HTSUS, provides for specific articles, namely builders' joinery and carpentry. However, if as in this case, the merchandise does not fit within the scope of the heading, the heading must be discounted, and examination of its subheadings is precluded. Thus, although "edge-glued lumber" may describe the goods, we are precluded by the superior heading from classifying the goods under subheading 4418.90.20, HTSUS.

Following the same reasoning in HQ 088292, we find that the lamstud products are not sufficiently advanced to be considered builder's joinery or carpentry of wood and are correctly classified under subheading 4421.90.9740, HTSUS.

Holding:

NY F84037 is hereby REVOKED. The lamstuds are classified under subheading 4421.90.9740, HTSUS. They are dutiable at the general column one rate at 3.3 percent *ad valorem*.

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

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

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF FISH OIL PRODUCTS REFERRED TO AS EPAX 3000 TG AND EPAX 0525 TG

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

ACTION: Notice of proposed modification of tariff classification ruling letter and revocation of treatment relating to the classification of fish oil products referred to as EPAX 3000 TG and EPAX 0525 TG.

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 modify a ruling concerning the tariff classification of fish oil products referred to as EPAX 3000 TG and EPAX 0525 TG, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before November 1, 2002.

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

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 572–8784.

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 (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 modify a ruling pertaining to the tariff classification of certain fish oil mixtures. Although in this notice Customs is specifically referring to New York Ruling Letter (NY) E81911, dated September 30, 1999, 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 that 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 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 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 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 NY E81911, Customs ruled that EPAX 3000 TG and EPAX 0525 TG were classified in subheading 3824.90.40, HTSUS, the provision for "[p]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: [f]atty substances of animal or vegetable origin and mixtures thereof." NY E81911 is set forth as Attachment "A" to this document.

It is now Customs position that EPAX 3000 TG and EPAX 0525 TG were not correctly classified in NY E81911 because these substances are specifically described by subheading 1517.90.20, HTSUS, as "[m]arga-

rine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading 1516: [o]ther: [a]rtificial mixtures of two or more of the products provided for in headings 1501 to 1515, inclusive: [o]ther."

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify NY E81911 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) 965784. (*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 transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 13, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, September 30, 1999.

CLA–2–38:RR:NC:2:239 E81911
Category: Classification
Tariff No. 3824.90.4020

MR. RICARDO V. AGUIRRE, JR.
A. BURGHART SHIPPING CO., INC.
HEMISPHERE CENTER
Newark, NJ 07114

Re: The tariff classification of EPAX 3000 TG (CAS 8016–13–5), EPAX 0525 TG (CAS 8016–13–5), EPAX 5500 TG (CAS 68424–59–9), EPAX 2050 TG (CAS 68424–59–9), and EPAX 5500 EE (CAS 97434–94–1) from Norway.

DEAR MR. AGUIRRE:

In your letter dated May 7, 1999, on behalf of your client Pharmline Inc., you requested a tariff classification ruling for the above products.

EPAX 3000 TG and EPAX 0525 TG are mixtures of triglyceride esters of saturated and unsaturated fatty acids that are obtained from a mixture of fish oils by refining, winterizing, bleaching, and deodorizing. EPAX 5500 TG and EPAX 2050 TG are mixtures containing monoglyceride, diglyceride and triglyceride esters of saturated C14–C18 and unsaturated C16–C22 fatty acids. They are prepared by hydrolysis, distillation, fractionation, and esterification. EPAX 5500 EE is a mixture of ethyl esters of saturated C14–C18 and unsaturated C16–C22 fatty acids.

The applicable subheading for all 5 products will be 3824.90.4020, Harmonized Tariff Schedule of the United States (HTS), which provides for prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries

(including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: other. The rate of duty will be 4.6 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Andrew Stone at 212–637–7063.

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 965784 AM
Category: Classification
Tariff No. 1517.90.20

MR. RICARDO V. AGUIRRE, JR.
A. BURGHART SHIPPING CO., INC.
HEMISPHERE CENTER
Newark, NJ 07114

Re: Modification of NY E81911; EPAX 3000 TG and EPAX 0525 TG.

DEAR MR. AGUIRRE:

This is regarding New York Ruling Letter (NY) E81911, issued to you on September 30, 1999, on behalf of Pharmline Inc., regarding classification of EPAX 3000 TG and EPAX 0525 TG and other fish oil products, under the Harmonized Tariff Schedule of the United States (HTSUS).

Due to processing differences of EPAX 3000 TG and EPAX 0525 TG from the other fish oils discussed in NY E81911, we now believe that EPAX 3000 TG and EPAX 0525 TG are correctly classified in heading 1517, HTSUS, as "edible mixtures of animal oils."

Facts:

The merchandise, EPAX 3000 TG and EPAX 0525 TG, are mixtures of triglyceride esters of saturated and unsaturated fatty acids that are obtained from a mixture of fish oils by refining, winterizing, bleaching, and deodorizing. Both products have the CAS registry number 8016–13–5.

In NY E81911, Customs classified the subject merchandise along with the other fish oils in subheading 3824.90.40, HTSUS, the provision for "[p]repared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: other: [f]atty substances of animal or vegetable origin and mixtures thereof."

Issue:

What is the classification of EPAX 3000 TG and EPAX 0525 TG?

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 order.

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

The HTSUS provisions under consideration are as follows:

1517	Margarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading 1516:
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

General EN(1)(A) to Chapter 15 states that the chapter covers "[a]nimal or vegetable fats and oils, whether crude, purified or refined or treated in certain ways (e.g., boiled, sulphurised or hydrogenated)." The General ENs to Chapter 15 go on to define "animal or vegetable fats and oils" as "esters of glycerol with fatty acids (such as palmitic, stearic and oleic acids)." Furthermore, "* * * vegetable or animal fats and oils and their fractions are classified in this Chapter whether used as foodstuffs or for technical or industrial purposes (e.g., the manufacture of soap, candles, lubricants, varnishes or paints)." The General ENs to the chapter also state that "[t]hese headings cover crude fats and oils and their fractions, as well as those which have been **refined** or purified, e.g., by clarifying, washing, filtering, **decolorizing,** deacidifying or **deodorizing."** Lastly, the ENs state that the main methods used for fractionation include **winterisation** (emphasis added).

If the product can be described by the terms of heading 1517, HTSUS, it cannot be classified in heading 3824, HTSUS, the provision for chemical products not elsewhere specified or included. The instant merchandise is triglycerides, obtained from a mixture of fish oils, which have been refined, winterized, bleached (decolorized) and deodorized. Fish oil is oil of an animal. Tryglycerides are esters of glycerol specified in the ENs as an animal fat and oil. All of the processes to which the fish oils have been subjected are specifically mentioned in the ENs as acceptable processing for oils of Chapter 15, HTSUS. Therefore, the merchandise is specifically described by the terms of heading 1517, HTSUS, and cannot be classified in heading 3824, HTSUS. Moreover, NY H87794, dated June 4, 2002, classifies a similar product containing triglycerides of fish oils that, as in the instant product, have not been chemically modified, in heading 1517, HTSUS. See also HQ 964015, dated January 31, 2002, HQ 964014, dated February 8, 2002, HQ 964593, dated February 13, 2002, HQ 964558, dated February 15, 2002, HQ 964804, dated February 19, 2002, and HQ 964558, dated February 15, 2002, wherein encapsulated fish oil mixtures containing triglycerides not chemically modified were classified in heading 1517, HTSUS.

Holding:

EPAX 3000 TG and EPAX 0525 TG are classified in subheading 1517.90.20, HTSUS, which provides for "[m]argarine; edible mixtures or preparations of animal or vegetable fats or oils or of fractions of different fats or oils of this chapter, other than edible fats or oils or their fractions of heading 1516: [o]ther: [a]rtificial mixtures of two or more of the products provided for in headings 1501 to 1515, inclusive: [o]ther."

Effect on Other Rulings:

NY E81911 is modified with the respect to the classification of EPAX 3000 TG and EPAX 0525 TG in accordance with this ruling.

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

PROPOSED REVOCATION OF A RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF A RIFLE SOCK

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and treatment relating to the classification of a rifle sock.

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 New York Ruling Letter (NY) H88291, issued March 5, 2002, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a rifle sock, style 886428. 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 November 1, 2002.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling relating to the tariff classification of a rifle sock. Although in this notice Customs is specifically referring to the revocation of New York Ruling Letter (NY) H88291, dated March 5, 2002, (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (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.

In NY H88291, Customs classified a rifle sock, style 886428, under heading 4202, HTSUS, which provides for, among other things, gun cases and, holsters and similar containers.

Customs has reviewed the classification of this article and has determined that the cited ruling is in error. Accordingly, we intend to revoke NY H88291 to reflect the proper classification of style 886428 under subheading 6307.90.9889, HTSUSA, as "Other made up articles, including dress patterns: Other: Other: Other: Other. Proposed Headquarters Ruling Letter 965622 revoking NY H88291, is set forth as "Attachment B".

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY H88291 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 965622. 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 tak-

ing this action, consideration will be given to any written comments timely received.

Dated: September 11, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, March 5, 2002.

CLA–2–42:RR:NC:3:341 H88291
Category: Classification
Tariff No. 4202.92.6091

JOHN B. PELLEGRINI
C/O ROSS & HARDIES
65 East 55th Street
New York, NY 10022–3219

Re: The tariff classification of rifle socks from China.

DEAR MR. PELLEGRINI:

In your letter dated February 22, 2002 you requested a tariff classification ruling. The request is on behalf of Paris Asia, Ltd.

The sample submitted is identified as Style Number 886428, a sheath for a rifle. It is approximately 55″ in length and 4″ in width. It is wholly of textile materials. The fabric is said to be of 55% cotton and 45% polyester fibers. One end is closed and the other has a rib-knit cuff with a drawstring closure. The sample will be returned as requested.

The applicable subheading for the rifle sock will be 4202.92.6091, Harmonized Tariff Schedule of the United States (HTS), which provides for gun cases, holsters and similar containers * * * with outer surface of sheeting of plastic or of textile materials, other, of cotton, other. The rate of duty will be 6.5%.

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 Kevin Gorman at 646–733–3041.

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

[ATTACHMENT B]

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

CLA–2 RR:CR:TE 965622
Category: Classification
Tariff No. 6307.90.9889

JOHN B. PELLEGRINI, ESQ.
ROSS & HARDIES
65 East 55 Street
New York, NY 10022–3219

Re: Revocation of New York Ruling Letter (NY) H88291; Rifle Sock: Other Made Up Article of Textiles; Storage Bag, Not Traveling Bag; *Totes, Incorporated v. United States*, 18 C.I.T. 919, 865 F. Supp. 867 (1994), aff'd, 69 F.3d 495 (Fed. Cir. 1995); Not Rifle Part or Accessory of Heading 9305.

DEAR MR. PELLEGRINI:

This letter is in response to your letter dated March 6, 2002, in which you request reconsideration of New York Ruling Letter (NY) H88291, issued March 5, 2002, in which Customs classified a rifle sock, style number 886428 in subheading 4202.92.6091, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for "Trunks * * * gun cases, holsters and similar containers * * *: Other: With outer surface of sheeting of plastic or of textile materials: Other: Of cotton: Other." We have reviewed that ruling and have found it to be in error. Therefore, this ruling revokes NY H88291.

Facts:

The merchandise at issue is described as a rifle sock of textile materials. The merchandise is a tubular knit sheath approximately 55 inches in length and 4 inches in width. The fabric is a 55/45-cotton/polyester blend. One end is closed and the other has a rib-knit cuff with a drawstring closure. We are advised that the article is used to protect a rifle or shotgun from dust, dirt, moisture and scratches when not in use. The bag is not primarily designed to carry the rifle or shotgun.

It is claimed that the correct classification is as a rifle accessory in subheading 9305.29.5000, HTSUSA.

Issue:

Whether the merchandise is classified in heading 4202, HTSUS, as a gun case; in heading 9305, HTSUS, as a gun part or accessory; or in heading 6307, HTSUS, as an other made up textile article.

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 Harmonized System at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI.

Heading 4202, HTSUS, 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, insulated food or beverage 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.

In order to warrant classification under heading 4202, HTSUSA, the rifle sock must be found to share the fundamental characteristics attributable to containers of heading

4202, HTSUSA. In *Totes, Incorporated v. United States*, 18 C.I.T. 919, 865 F. Supp. 867 (1994), aff'd, 69 F.3d 495 (Fed. Cir. 1995), the Court of International Trade (CIT) examined the classification of automobile trunk organizers (described as bags or cases designed to store trunk necessities such as jumper cables, tire inflator, tools, antifreeze, oil, and other fluids, etc., in a neat and orderly manner) and the application of *ejusdem generis*, to determine whether the organizers were of the same class or kind of containers as the listed 4202 exemplars. The Court found significant disparity in the physical characteristics, purposes, and uses of the individual heading 4202 exemplars, but emphasized that the essential characteristics and purposes of all of the exemplars were to organize, store, protect and carry various items. The capability of the trunk organizers to carry—not to organize, store, and protect—was a central issue in the case. After having stipulated to the fact that the organizers had hefty web handles for easy carrying, the plaintiff subsequently attempted to minimize the organizers' carrying capacity and function. The Court, however, rejected any requirement that the principal design feature of an article classified as a "similar container" under heading 4202 be portability or transportation of the contents.

Like the trunk organizers, the subject textile rifle sock is not principally designed for the transportation of contents. The CIT in *Totes*, recognized that portability is usually an incidental purpose of jewelry boxes and certain tool chests classifiable in heading 4202, but noted that those containers nevertheless retained their primary uses to organize, store and protect articles. However, unlike the trunk organizers—which featured internal movable dividers by which a variety of items could be compartmentalized—the subject textile rile sock features little in the way of organizational characteristics. The essential characteristics and purpose of the textile rifle sock is to store and protect a rifle or shotgun, not to organize, store, protect and carry various items.

Among other goods, heading 9305, HTSUS, covers parts and accessories of shotguns and rifles of heading 9303. The EN to heading 9305 state parts and accessories of the heading includes "* * * (3) **[p]rotective covers and protective cases,** for butts, sights, barrels or breeches.

You argue that the rifle sock is similar to the protective covers and protective cases for butts, sights, barrels or breeches provided for in heading 9305, HTSUS. We do not agree.

We note that when a tariff provision or EN lists a number of items and is followed by a general word or phrase, like the use of the phrase "similar containers," the rule of statutory construction called *ejusdem generis* applies. See *Avenues in Leather; Inc. v. United States*, 178 F.3d 1241, 1244 (Fed. Cir. 1999). Imported merchandise falls within the general phrase if it possesses the essential characteristics or purposes uniting the listed exemplars and does not have a more specific primary purpose that is inconsistent with the listed exemplars. In the instant case the EN to heading 9305 state parts and accessories of the heading includes "* * * (3)**[p]rotective covers and protective cases,** for butts, sights, barrels or breeches. The phrase "similar items" is not used. Therefore a protective cover for a rifle is not consistent with listed examples of covers. In addition we note that butts, sights, barrels and breeches are specific parts, but not the only parts, of the articles of headings 9301 to 9304. Each of these articles makes the rifle usable or widens its range of usefulness. However, only the protective covers and protective cases for butts, sights, barrels or breeches are included as parts and accessories of the heading. It is also our view that the heading is limited to protective covers for parts of the articles of 9301 to 9304 and not for covers for the articles (rifles or shotguns) themselves. We note additionally that the EN to heading 9305 states that the heading excludes gun cases (heading 42.02). Accordingly, protective covers for the rifle (the rifle sock) are not included in this heading.

Heading 6307, HTSUS, provides for other made up articles of textile materials. The Explanatory Notes for this heading state that the heading covers made up articles of any textile material that are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature. The EN indicate that the heading excludes travel goods (suit-cases, rucksacks, etc.), shopping—bags, toilet-cases, etc., and all similar containers of heading 4202. The EN also state, in pertinent parts, that the heading includes loose covers for motor-cars, machines, suitcases, tennis rackets, etc.; domestic laundry or shoe bags and similar articles; garment bags other than travel garment bags; and tea cosy covers. The essential purposes of the exemplars listed in the EN are storage and/or protection. We note that the gun would be put into the rifle sock before being stored in the display case or safe in one's home. This rifle sock helps to protect the gun from scratches, as well as helping absorb any moisture in the air to prevent the rifle from rusting. The gun would be transferred to a rifle case before traveling. The rifle sock shares the essential purposes of

storage and/or protection. In light of this fact and the foregoing discussion, we find that the textile rifle sock is classified in subheading 6307.90.9889, HTSUSA.

Holding:

The textile rifle sock is classified in subheading 6307.90.9889, HTSUSA, the provision for "Other made up articles, including dress patterns: Other: Other: Other, Other: Other." The general column one duty rate is 7 percent ad valorem.

NY H88291, issued March 5, 2002, is hereby revoked.

MYLES B HARMON,
Acting Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF PLASTIC-COATED, COTTON DENIM BASEBALL CAPS

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of polyurethane plastic-coated, woven cotton denim baseball caps.

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 relating to the tariff classification of polyurethane plastic-coated, woven cotton denim baseball caps under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) and is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed action was published in the CUSTOMS BULLETIN of August 14, 2002, Volume 36, Number 33. 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 December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Textile Branch (202) 927–2511.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended,

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

In Headquarters Ruling Letter (HQ) 960302, dated May 9, 1997, Customs classified a polyurethane plastic-coated, woven cotton baseball cap, in subheading 6505.90.2590, HTSUSA, which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed: Other: Of cotton, flax or both: Other, Other." Since the issuance of this ruling, Customs has reviewed the classification of the baseball cap and has determined that the cited ruling is in error. Accordingly, as set forth in the analysis of HQ 963537, we are revoking HQ 960302 to reflect proper classification in subheading 6505.90.2060, HTSUSA, the provision for "Hats and other headgear * * *: Other: Of cotton, flax or both: Not knitted: Certified hand-loomed and folklore products; and headwear of cotton, Other."

Pursuant to Customs obligations, a notice of proposed revocation of HQ 960302, dated May 9, 1997, was published in the CUSTOMS BULLETIN of August 14, 2002, Volume 36, Number 33. No comments were received.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, Customs is revoking one ruling letter pertaining to the classification of polyurethane plastic-coated, cotton denim baseball caps. Although in this notice Customs is specifically referring to HQ 960302, dated May 9, 1997, 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 databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during that the comment period.

Similarly, pursuant to section 625(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 (HTSUS). Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

Dated: September 12, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 12, 2002.

CLA–2 RR:TC:TE 963537 TMF
Category: Classification
Tariff No. 6505.90.2060

KENNETH G. WEIGEL, ESQ.
KIRKLAND & ELLIS
655 Fifteenth Street, NW
Washington, DC 20005

Re: Revocation of HQ 960302; polyurethane-coated baseball cap; headgear/headwear.

DEAR MR. WEIGEL:

In Headquarters Ruling Letter (HQ) 960302, issued to you, May 9, 1997, on behalf of your client, Humphrey's International, a polyurethane-coated denim baseball cap was classified in subheading 6505.90.2590, Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"), which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed: Other: Of cotton, flax or both: Other, Other."

Upon review of HQ 960302, Customs has determined that this merchandise was erroneously classified. Therefore, this ruling revokes HQ 960302.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of HQ 960302 was published on August 14, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 33. No comments were received in response to the notice.

Facts:

The baseball cap at issue in HQ 960302 was made of 100 percent woven cotton denim fabric that was coated with polyurethane material. It had six panels of fabric that were sewn together to form the crown, and a stiff visor. The top of the cap had metal-rimmed eyelet holes and a button peak, and at the base of the rear of the crown, there was an ad-

justable plastic strap to conform to the wearer's head. The front of the cap also featured an embroidered logo.

The polyurethane coating was applied to the fabric before the fabric was cut and sewn into the completed cap. The coating was transparent but visible to the naked eye and gave the cap a shiny appearance. The polyurethane coating covered the top surface of the crown and both sides of the visor.

Issue:

Whether the polyurethane-coated denim baseball cap is classified in subheading 6505.90.2060, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for headwear of cotton, or in subheading 6505.90.2590, HTSUSA, as headgear of cotton?

Law and Analysis:

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

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

The HTSUSA provisions under consideration are as follows:

6505	Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed:					
6505.90	Other:					
	Of cotton, flax or both:					
	Not knitted:					
6505.90.20	Certified hand-loomed and folklore products; and headwear of cotton,					
6505.90.2060	Other					
*	*	*	*	*	*	*
6505.90.25	Other,					
6505.90.2590	Other					

The merchandise at issue is a woven cotton denim baseball cap that covers entirely the wearer's head. A cap is a type of headgear. *Merriam Webster's Collegiate Dictionary*, Tenth Edition (1999), defines headgear as a covering or protective device for the head. Rulings issued by Customs have based the definition of headgear on the *Random House Dictionary of the English Language*, Unabridged Edition (1983), which describes headgear as "any covering for the head, esp. a hat, cap, bonnet, etc." *See* HQ 087539, dated September 20, 1990.[1] In the instant case, the merchandise is described as a baseball cap that meets both definitions aforementioned. Further, the merchandise meets the definition of the term "cap," defined in *Merriam*, as "a head covering especially with a visor and no brim."

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

We refer to the General Explanatory Note to Chapter 65, which offers an expansive definition of the term "headgear":

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

The instant cap is a type of headgear that is composed by sewing cut components of polyurethane-coated denim material together. The EN to heading 6505 state that the heading covers:

> Hats and headgear (whether or not lined or trimmed) made directly by knitting or crocheting (whether or not fulled or felted), or made up from lace, felt or other textile fabric in the piece, whether or not the fabric has been oiled, waxed, rubberised or otherwise impregnated or coated.
>
> It also includes hat-shapes made by sewing, but not hat-shapes or headgear made by sewing or otherwise assembling plaits or strips (heading 65.04).

The EN also state, in pertinent part, that the heading includes "Headgear made up from woven fabric, lace, net fabric, etc., such as chefs' hats, nuns' head-dresses, nurses' or waitresses' caps, etc., having clearly the character of headgear." As the instant article is a type of headgear made of plastic-coated, woven cotton denim material, it is classifiable within this heading.

In HQ 960302, the issue was whether the merchandise was classified according to its polyurethane coating or the denim textile fabric (both of which are provided, respectively within headings 6505 and 6506, HTSUSA). Customs resolved the issue by determining by application of the exclusionary Note 2(a) to Chapter 59[3], that the constituent material of the subject merchandise was not excluded from classification within heading 5903 (as none of the listed exceptions applied), and accordingly classified the merchandise according to GRI 1.

Although we concur in part with the analysis of HQ 960302 with respect to the application of GRI 1 for determination of whether heading 6506 was an appropriate heading, we do not find it be controlling since the subject merchandise is provided *eo nomine* within subheading 6505.90.2060 as it is composed of cotton woven material.

In pertinent part, subheading 6505.90.20 provides *eo nomine* for headwear of cotton. We thus find that the instant cap, which is composed of plastic-coated, 100 percent cotton, is properly classified in subheading 6505.90.2060, HTSUSA. For additional rulings consistent with this determination, s*ee* HQ 958958, dated September 12, 1997 (classifying three separate styles of cotton caps within subheading 6505.90.2060, HTSUSA) and HQ

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

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

[3] Note 2(a) to chapter 59, states that heading 5903 applies to: Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than:

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

087825, dated September 5, 1990 (modifying HQ 087060, dated August 17, 1990 and classifying a woven 100% cotton twill cap within subheading 6505.90.2060).

Holding:

HQ 960302, dated May 9, 1997, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

The polyurethane plastic-coated, cotton denim baseball cap is classified in subheading 6506.90.2060, HTSUSA, textile category 359, which provides for "Hats and other headgear * * *: Other: Of cotton, flax or both: Not knitted: Certified hand-loomed and folklore products; and headwear of cotton, Other." The general column one duty rate is 7.6 percent *ad valorem*.

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

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

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

REVOCATION OF TREATMENT RELATING TO DRAWBACK ON STEEL TRIM, SCRAP AND WASTE

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

ACTION: Notice of revocation of treatment relating to drawback on steel trim, scrap and waste.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 USC § 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 the treatment allowing drawback on the export of steel trim, scrap and waste. Customs also is revoking any treatment previously accorded by Customs to substantially identical transactions that is contrary to the position set forth in this notice. Notice of the proposed action was published on July 31, 2002, in Volume 35, Number 31, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise that is exported on or after December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Renee D'Antonio Chovanec, Duty and Refund Determination Branch: (202) 572–8795.

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)(2), Tariff Act of 1930 (19 U.S.C. § 1625(c)(2)), as amended by section 623 of Title VI, notice proposing to revoke the treatment allowing drawback on the export of steel trim, scrap and waste, and proposing to revoke any treatment accorded to substantially identical merchandise was published on July 31, 2002, in Volume 35, Number 31, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

As stated in that proposed notice Customs is revoking the treatment allowing drawback on the export of steel trim, scrap and waste. Customs also is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may have been, among other reasons, the result of the claimant's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to a drawback transaction of the same or similar merchandise, or the claimant's or Customs previous interpretation 19 USC § 1313(b). Any person with interests in drawback on substantially identical merchandise should have advised Customs during the comment period. A drawback claimant's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of a lack of reasonable care on the part of the drawback claimant or its agent for drawback claims subsequent to the effective date of this final decision.

In *Precision Specialty Metals, Inc. v. United States* (182 F.Supp.2d 1314 (Ct. Intl. Trade 2001)) the Court found that Customs' payment of drawback on 69 drawback claims which included waste as the exported

merchandise to constitute a "treatment" within the meaning of 19 USC § 1625(c)(2) and Title 19, Part 177, Subpart A, § 177.9. Therefore the Court found it necessary for Customs to follow the procedures contained in 19 USC § 1625 in order for Customs to apply its long-held position that drawback is not payable on waste. Per T.D. 81–74, March 31, 1981, which superseded T.D. 80–227 (B), the general manufacturing drawback contract under 19 U.S.C. § 1313(b), Articles Manufactured Using Steel, no drawback is payable on any waste which results from the manufacturing operation.

Therefore, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking the treatment allowing drawback on the export of steel trim, scrap and waste. Additionally Customs is revoking any treatment previously accorded by Customs to substantially identical drawback transactions that are contrary to the position set forth in this notice, to reflect the proper application of T.D. 81–74 pursuant to the analysis set forth in Headquarters Ruling Letters HQ 229473; HQ 229581; HQ 229582; HQ 229583; HQ 229584 (Attachments A–E).

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

Dated: September 17, 2002.

WILLIAM G. ROSOFF,
(for Myles Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

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

DRA–2–01 RR:CR:DR
HQ 229473RDC
Category: Drawback

ROBIN H. GILBERT, ESQ.
COLLIER, SHANNON, RILL & SCOTT
3050 K Street, NW
Washington, DC 20007

Re: *Precision Specialty Metals, Inc., v. United States*, 182 F.Supp.2d 1314 (Ct. Intl. Trade 2001) and Treasury Decision 81–74.

DEAR MS. GILBERT:

This is in regard to your client Precision Specialty Metals, Inc. Pursuant to the Court's opinion in *Precision Specialty Metals, Inc. v. United States*, (182 F.Supp.2d 1314 (Ct. Intl. Trade 2001)) and the requirements of 19 USC § 1625(c), this is to inform you of Customs revocation of a treatment accorded certain drawback transactions with regard to drawback per 19 USC § 1313(b). Specifically no drawback will be paid on any steel waste, scrap or trim.

Pursuant to section 1625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of the treatment allowing drawback on steel trim, scrap or waste was published on July 31, 2002, in Volume 35, Number 31, of the CUSTOMS BULLETIN. As explained in that notice, the period within which to submit comments on this proposal was until August 30, 2002. No comments were received in response to the notice.

Facts:

The claimant claimed drawback under the general ruling for steel (T.D. 81–74). The Customs drawback specialist processing the claims asked for evidence of export. The claimant provided copies of bills of lading that referred to the export as "scrap steel for re-melting purposes only", "steel scrap sabot", and "stainless steel scrap". Notwithstanding a ruling published as C.S.D. 80–137 which held that the exportation of steel scrap, a valuable waste, did not create eligibility for drawback, Customs liquidated 69 claims granting drawback. Upon discovering that error, Customs denied drawback on the remainder of the claims. The claimant sought judicial review. The court held that the liquidation of those claims was a treatment that could be revoked by Customs only by following the procedure set in 19 USC 1625.

Issue:

Whether the export of steel scrap or any other waste, valuable or valueless, results in entitlement to drawback?

Law and Analysis:

Section 1313(b) of the drawback law (19 USC 1313) provides for substitution of the merchandise used in the manufacture or production of the exported or destroyed article if the imported duty-paid merchandise and substituted merchandise are of the same kind and quality and if both the imported duty-paid merchandise and substituted merchandise are used in manufacture or production by the manufacturer or producer within three years from the date of receipt by the manufacturer or producer of the imported merchandise.

Customs has long held that drawback is not allowable on exports of waste (see, e.g., C.S.D. 80–137 and C.S.D. 82–127 (the former citing *Burgess Battery Co. v. United States*, 13 Cust. Ct. 37, C.D. 866 (1944), and the latter citing a 1932 Customs decision)). In *United States v. Dean Linseed-Oil Co.*, (87 Fed. 453 (2nd Cir. 1898), cert. den., 172 U.S. 647 (1898)), the Government argued that the petitioner was not entitled to any drawback "because oil cake is not a manufactured article, but is waste." (*Id*. at 456.) The court did not dispute that such a defense would have been valid but held that it was not applicable since the Government had considered oil cake to be a manufactured article since 1861.

The court implicitly accepted the Government's position that drawback was unavailable on the exportation of waste by distinguishing the linseed oil cake from tobacco scraps or tobacco clippings, which were held not to be manufactured articles by the U.S. Supreme Court in *Seeberger v. Castro*, (153 U.S. 32 (1894)). Customs has followed this position continuously for many years. See, e.g., C.S.D. 80–137, dated October 22, 1979, wherein Customs held that drawback is not allowable on exportation of valuable waste incurred in the manufacture of rolled steel coils.

The statutory terms "the use of imported merchandise" and "used in the manufacture or production" have been interpreted to exclude valuable waste from such use for nearly 100 years, as shown in *Dean Linseed-Oil* (supra, 87 Fed. 453). Waste which is recovered and which is valuable as waste cannot be said to be used in the manufacture or production of other articles under the relative value concept articulated by the Supreme Court in *National Lead Co. v. United States*, (252 U.S. 140, 144–145 (1920); see also 22 Op. Atty. Gen. 111, 113–114 (1898)).

Since 1936, Customs expressly required that the value of valuable waste be excluded from any manufacturing drawback claim. See T.D. 48490 (1936), which amended Article 1020 of the Customs Regulations of 1931. That regulatory provision has been present in each revision of the drawback regulations. See Article 1041, Customs Regulations of 1937; Section 22.4(a), Customs Regulations of 1943, as amended (1963 ed.) (19 CFR 22.4(a)) and Sections 191.22(a)(2) and 191.32(b), Customs Regulations (19 CFR 191.22(a)(2) and 191.32(b)) (1997 ed.). See also Article 962, Customs Regulations of 1923, which required an applicant for manufacturing drawback to state whether wastage was incurred in the process and the value of such waste.

In fact, the Customs Regulations provide that when waste results from a drawback manufacturing operation, the amount of drawback available may be affected. If the waste has value, drawback may only be claimed on the basis of the quantity of substituted merchandise appearing in the exported articles, or used in the exported articles, less valuable waste (see 19 CFR 191.22(a)(2)). Under the "appearing in" method, the portion of the imported merchandise resulting in waste would not appear in the exported article and, therefore, the effect would be to reduce the amount of drawback available. Under the "used in, less valuable waste" method, the quantity of imported merchandise used to produce the exported articles is reduced by an amount equal to the quantity of merchandise the value of the waste would replace (see 19 CFR 191.22(a)(2)).

Moreover, the general manufacturing drawback contract for steel is published as T.D. 81–74 and includes a portion titled "WASTE" which provides as follows:

> The drawback claimant understands that **no drawback is payable on any waste which results from the manufacturing operation.** Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, the drawback claimant agrees to keep records to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, the drawback claimant agrees to keep records to establish that fact.

(emphasis added).

In distinguishing between byproducts (which are drawback eligible) and waste (which is not) when characterizing residual material from manufacturing or production, Customs has generally utilized the following information about the residual material:

1. The nature of the material of which the residue is composed.
2. The value of the residue as compared to the value of the principal product and the raw material.
3. The use to which the residue is put.
4. The classification of the residue under the tariff law, if imported.
5. Whether the residue is a commodity recognized in commerce.
6. Whether the residue must be subjected to some process to make it saleable.

(See, e.g., HQ 226184 (May 28, 1996).) This analysis of residual material is based on judicial interpretations. In *Patton v. United States*, (159 U.S. 500; 16 S. Ct. 89 (1895)), the Court stated that

> [t]he prominent characteristic running through all these definitions [of waste] is that of refuse, or material that is not susceptible of being used for the ordinary purposes of manufacture. It does not presuppose that the article is absolutely worthless, but that it is unmerchantable, and used for purposes for which merchantable material of the same class is unsuitable.

(*Id*. at 503.) The Supreme Court in *Latimer v. United States*, 223 U.S. 501, 32 S. Ct. 242 (1912), also stated that

> [t]he word [waste] as thus used generally refers to remnants and by-products of small value that have not the quality or utility either of the finished product or of the raw material.

(*Id*. at 504.)

These Supreme Court cases were cited and relied upon in *Mawer-Gulden-Annis (Inc.) v. United States*, (17 CCPA 270, T.D. 43689 (1929)) in which broken green olives, imported in casks in brine and used to make garnishing or sandwich material, were held not to be waste on the basis that the broken green olives "possess[ed] the same food qualities and some of the uses of whole pitted green olives" (17 CCPA at 272). See also, *Willits & Co. v. United States*, (11 Ct. Cust. App. 499, 501–502, T.D. 39657 (1923)), in which certain beef cracklings were held to be waste as material not susceptible of being used in the ordinary operations of a packing house, material not sought or purposely produced as a by-product in the industry, material not processed after it became a waste, and not possessing the characteristics of its original estate.

In distinguishing between valuable and valueless waste, Customs has basically been governed by whether the waste is a marketable product with more than a negligible value (see letters dated July 18, 1949, from the Acting Commissioner of Customs to the Collector, St. Louis, Missouri; May 8, 1952, from the Chief, Division of Drawbacks, Penalties, and Quotas to the Collector, New York, New York (abstracted as T.D. 52997–(B)); December 17, 1954, from the Chief, Division of Classification and Drawbacks, to the Collector, Cleve-

land, Ohio (abstracted as T.D. 3701–(F))). If the waste is a marketable product with more than a negligible value, the waste is valuable; if not, the waste is valueless.

Holding:

Based the above court cases, Customs decisions, other precedent and T.D. 81–74, drawback will not be paid on steel scrap, trim or waste. The treatment allowing drawback on steel trim, scrap or waste 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.

WILLIAM G. ROSOFF,
(for Myles Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
DRA–2–01 RR:CR:DR
HQ 229581RDC
Category: Drawback

ROBIN H. GILBERT, ESQ.
COLLIER, SHANNON, RILL & SCOTT
3050 K Street, NW
Washington, DC 20007

Re: *Precision Specialty Metals, Inc., v. United States*, 182 F.Supp.2d 1314 (Ct. Intl. Trade 2001) and Treasury Decision 81–74.

DEAR MS. GILBERT:

This is in regard to your client Ulbrich Stainless Steel. Pursuant to the Court's opinion in *Precision Specialty Metals, Inc. v. United States*, (182 F.Supp.2d 1314 (Ct. Intl. Trade 2001)) and the requirements of 19 USC § 1625(c), this is to inform you of Customs revocation of a treatment accorded certain drawback transactions with regard to drawback per 19 USC § 1313(b). Specifically no drawback will be paid on any steel waste, scrap or trim.

Pursuant to section 1625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of the treatment allowing drawback on steel trim, scrap or waste was published on July 31, 2002, in Volume 35, Number 31, of the CUSTOMS BULLETIN. As explained in that notice, the period within which to submit comments on this proposal was until August 30, 2002. No comments were received in response to the notice.

Facts:

The claimant claimed drawback under the general ruling for steel (T.D. 81–74). The Customs drawback specialist processing the claims asked for evidence of export. The claimant provided copies of bills of lading that referred to the export as "scrap steel for re-melting purposes only", "steel scrap sabot", and "stainless steel scrap". Notwithstanding a ruling published as C.S.D. 80–137 which held that the exportation of steel scrap, a valuable waste, did not create eligibility for drawback, Customs liquidated 69 claims granting drawback. Upon discovering that error, Customs denied drawback on the remainder of the claims. The claimant sought judicial review. The court held that the liquidation of those claims was a treatment that could be revoked by Customs only by following the procedure set in 19 USC 1625.

Issue:

Whether the export of steel scrap or any other waste, valuable or valueless, results in entitlement to drawback?

Law and Analysis:

Section 1313(b) of the drawback law (19 USC 1313) provides for substitution of the merchandise used in the manufacture or production of the exported or destroyed article if the

imported duty-paid merchandise and substituted merchandise are of the same kind and quality and if both the imported duty-paid merchandise and substituted merchandise are used in manufacture or production by the manufacturer or producer within three years from the date of receipt by the manufacturer or producer of the imported merchandise.

Customs has long held that drawback is not allowable on exports of waste (see, e.g., C.S.D. 80–137 and C.S.D. 82–127 (the former citing *Burgess Battery Co. v. United States*, 13 Cust. Ct. 37, C.D. 866 (1944), and the latter citing a 1932 Customs decision)). In *United States v. Dean Linseed-Oil Co.*, (87 Fed. 453 (2nd Cir. 1898), cert. den., 172 U.S. 647 (1898)), the Government argued that the petitioner was not entitled to any drawback "because oil cake is not a manufactured article, but is waste." (*Id*. at 456.) The court did not dispute that such a defense would have been valid but held that it was not applicable since the Government had considered oil cake to be a manufactured article since 1861.

The court implicitly accepted the Government's position that drawback was unavailable on the exportation of waste by distinguishing the linseed oil cake from tobacco scraps or tobacco clippings, which were held not to be manufactured articles by the U.S. Supreme Court in *Seeberger v. Castro*, (153 U.S. 32 (1894)). Customs has followed this position continuously for many years. See, e.g., C.S.D. 80–137, dated October 22, 1979, wherein Customs held that drawback is not allowable on exportation of valuable waste incurred in the manufacture of rolled steel coils.

The statutory terms "the use of imported merchandise" and "used in the manufacture or production" have been interpreted to exclude valuable waste from such use for nearly 100 years, as shown in *Dean Linseed-Oil* (supra, 87 Fed. 453). Waste which is recovered and which is valuable as waste cannot be said to be used in the manufacture or production of other articles under the relative value concept articulated by the Supreme Court in *National Lead Co. v. United States*, (252 U.S. 140, 144–145 (1920); see also 22 Op. Atty. Gen. 111, 113–114 (1898)).

Since 1936, Customs expressly required that the value of valuable waste be excluded from any manufacturing drawback claim. See T.D. 48490 (1936), which amended Article 1020 of the Customs Regulations of 1931. That regulatory provision has been present in each revision of the drawback regulations. See Article 1041, Customs Regulations of 1937; Section 22.4(a), Customs Regulations of 1943, as amended (1963 ed.) (19 CFR 22.4(a)) and Sections 191.22(a)(2) and 191.32(b), Customs Regulations (19 CFR 191.22(a)(2) and 191.32(b)) (1997 ed.). See also Article 962, Customs Regulations of 1923, which required an applicant for manufacturing drawback to state whether wastage was incurred in the process and the value of such waste.

In fact, the Customs Regulations provide that when waste results from a drawback manufacturing operation, the amount of drawback available may be affected. If the waste has value, drawback may only be claimed on the basis of the quantity of substituted merchandise appearing in the exported articles, or used in the exported articles, less valuable waste (see 19 CFR 191.22(a)(2)). Under the "appearing in" method, the portion of the imported merchandise resulting in waste would not appear in the exported article and, therefore, the effect would be to reduce the amount of drawback available. Under the "used in, less valuable waste" method, the quantity of imported merchandise used to produce the exported articles is reduced by an amount equal to the quantity of merchandise the value of the waste would replace (see 19 CFR 191.22(a)(2)).

Moreover, the general manufacturing drawback contract for steel is published as T.D. 81–74 and includes a portion titled "WASTE" which provides as follows:

> The drawback claimant understands that **no drawback is payable on any waste which results from the manufacturing operation.** Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, the drawback claimant agrees to keep records to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, the drawback claimant agrees to keep records to establish that fact.

(emphasis added).

In distinguishing between byproducts (which are drawback eligible) and waste (which is not) when characterizing residual material from manufacturing or production, Customs has generally utilized the following information about the residual material:

1. The nature of the material of which the residue is composed.
2. The value of the residue as compared to the value of the principal product and the raw material.

3. The use to which the residue is put.
4. The classification of the residue under the tariff law, if imported.
5. Whether the residue is a commodity recognized in commerce.
6. Whether the residue must be subjected to some process to make it saleable.

(See, e.g., HQ 226184 (May 28, 1996).) This analysis of residual material is based on judicial interpretations. In *Patton v. United States*, (159 U.S. 500; 16 S. Ct. 89 (1895)), the Court stated that

> [t]he prominent characteristic running through all these definitions [of waste] is that of refuse, or material that is not susceptible of being used for the ordinary purposes of manufacture. It does not presuppose that the article is absolutely worthless, but that it is unmerchantable, and used for purposes for which merchantable material of the same class is unsuitable.

(*Id*. at 503.) The Supreme Court in *Latimer v. United States*, 223 U.S. 501, 32 S. Ct. 242 (1912), also stated that

> [t]he word [waste] as thus used generally refers to remnants and by-products of small value that have not the quality or utility either of the finished product or of the raw material.

(*Id*. at 504.)

These Supreme Court cases were cited and relied upon in *Mawer-Gulden-Annis (Inc.) v. United States*, (17 CCPA 270, T.D. 43689 (1929)) in which broken green olives, imported in casks in brine and used to make garnishing or sandwich material, were held not to be waste on the basis that the broken green olives "possess[ed] the same food qualities and some of the uses of whole pitted green olives" (17 CCPA at 272). See also, *Willits & Co. v. United States*, (11 Ct. Cust. App. 499, 501–502, T.D. 39657 (1923)), in which certain beef cracklings were held to be waste as material not susceptible of being used in the ordinary operations of a packing house, material not sought or purposely produced as a by-product in the industry, material not processed after it became a waste, and not possessing the characteristics of its original estate.

In distinguishing between valuable and valueless waste, Customs has basically been governed by whether the waste is a marketable product with more than a negligible value (see letters dated July 18, 1949, from the Acting Commissioner of Customs to the Collector, St. Louis, Missouri; May 8, 1952, from the Chief, Division of Drawbacks, Penalties, and Quotas to the Collector, New York, New York (abstracted as T.D. 52997–(B)); December 17, 1954, from the Chief, Division of Classification and Drawbacks, to the Collector, Cleveland, Ohio (abstracted as T.D. 3701–(F))). If the waste is a marketable product with more than a negligible value, the waste is valuable; if not, the waste is valueless.

Holding:

Based the above court cases, Customs decisions, other precedent and T.D. 81–74, drawback will not be paid on steel scrap, trim or waste. The treatment allowing drawback on steel trim, scrap or waste 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.

WILLIAM G. ROSOFF,
(for Myles Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
DRA–2–01 RR:CR:DR
HQ 229582RDC
Category: Drawback

ROBIN H. GILBERT, ESQ.
COLLIER, SHANNON, RILL & SCOTT
3050 K Street, NW
Washington, DC 20007

Re: *Precision Specialty Metals, Inc., v. United States*, 182 F.Supp.2d 1314 (Ct. Intl. Trade 2001) and Treasury Decision 81–74.

DEAR MS. GILBERT:

This is in regard to your client Joseph T. Ryerson & Son, Inc., (formerly Thypin Steel). Pursuant to the Court's opinion in *Precision Specialty Metals, Inc. v. United States*, (182 F.Supp.2d 1314 (Ct. Intl. Trade 2001)) and the requirements of 19 USC § 1625(c), this is to inform you of Customs revocation of a treatment accorded certain drawback transactions with regard to drawback per 19 USC § 1313(b). Specifically no drawback will be paid on any steel waste, scrap or trim.

Pursuant to section 1625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of the treatment allowing drawback on steel trim, scrap or waste was published on July 31, 2002, in Volume 35, Number 31, of the CUSTOMS BULLETIN. As explained in that notice, the period within which to submit comments on this proposal was until August 30, 2002. No comments were received in response to the notice.

Facts:

The claimant claimed drawback under the general ruling for steel (T.D. 81–74). The Customs drawback specialist processing the claims asked for evidence of export. The claimant provided copies of bills of lading that referred to the export as "scrap steel for re-melting purposes only", "steel scrap sabot", and "stainless steel scrap". Notwithstanding a ruling published as C.S.D. 80–137 which held that the exportation of steel scrap, a valuable waste, did not create eligibility for drawback, Customs liquidated 69 claims granting drawback. Upon discovering that error, Customs denied drawback on the remainder of the claims. The claimant sought judicial review. The court held that the liquidation of those claims was a treatment that could be revoked by Customs only by following the procedure set in 19 USC 1625.

Issue:

Whether the export of steel scrap or any other waste, valuable or valueless, results in entitlement to drawback?

Law and Analysis:

Section 1313(b) of the drawback law (19 USC 1313) provides for substitution of the merchandise used in the manufacture or production of the exported or destroyed article if the imported duty-paid merchandise and substituted merchandise are of the same kind and quality and if both the imported duty-paid merchandise and substituted merchandise are used in manufacture or production by the manufacturer or producer within three years from the date of receipt by the manufacturer or producer of the imported merchandise.

Customs has long held that drawback is not allowable on exports of waste (see, e.g., C.S.D. 80–137 and C.S.D. 82–127 (the former citing *Burgess Battery Co. v. United States*, 13 Cust. Ct. 37, C.D. 866 (1944), and the latter citing a 1932 Customs decision)). In *United States v. Dean Linseed-Oil Co.*, (87 Fed. 453 (2nd Cir. 1898), cert. den., 172 U.S. 647 (1898)), the Government argued that the petitioner was not entitled to any drawback "because oil cake is not a manufactured article, but is waste." (*Id*. at 456.) The court did not dispute that such a defense would have been valid but held that it was not applicable since the Government had considered oil cake to be a manufactured article since 1861.

The court implicitly accepted the Government's position that drawback was unavailable on the exportation of waste by distinguishing the linseed oil cake from tobacco scraps

or tobacco clippings, which were held not to be manufactured articles by the U.S. Supreme Court in *Seeberger v. Castro*, (153 U.S. 32 (1894)). Customs has followed this position continuously for many years. See, e.g., C.S.D. 80–137, dated October 22, 1979, wherein Customs held that drawback is not allowable on exportation of valuable waste incurred in the manufacture of rolled steel coils.

The statutory terms "the use of imported merchandise" and "used in the manufacture or production" have been interpreted to exclude valuable waste from such use for nearly 100 years, as shown in *Dean Linseed-Oil* (supra, 87 Fed. 453). Waste which is recovered and which is valuable as waste cannot be said to be used in the manufacture or production of other articles under the relative value concept articulated by the Supreme Court in *National Lead Co. v. United States*, (252 U.S. 140, 144–145 (1920); see also 22 Op. Atty. Gen. 111, 113–114 (1898)).

Since 1936, Customs expressly required that the value of valuable waste be excluded from any manufacturing drawback claim. See T.D. 48490 (1936), which amended Article 1020 of the Customs Regulations of 1931. That regulatory provision has been present in each revision of the drawback regulations. See Article 1041, Customs Regulations of 1937; Section 22.4(a), Customs Regulations of 1943, as amended (1963 ed.) (19 CFR 22.4(a)) and Sections 191.22(a)(2) and 191.32(b), Customs Regulations (19 CFR 191.22(a)(2) and 191.32(b)) (1997 ed.). See also Article 962, Customs Regulations of 1923, which required an applicant for manufacturing drawback to state whether wastage was incurred in the process and the value of such waste.

In fact, the Customs Regulations provide that when waste results from a drawback manufacturing operation, the amount of drawback available may be affected. If the waste has value, drawback may only be claimed on the basis of the quantity of substituted merchandise appearing in the exported articles, or used in the exported articles, less valuable waste (see 19 CFR 191.22(a)(2)). Under the "appearing in" method, the portion of the imported merchandise resulting in waste would not appear in the exported article and, therefore, the effect would be to reduce the amount of drawback available. Under the "used in, less valuable waste" method, the quantity of imported merchandise used to produce the exported articles is reduced by an amount equal to the quantity of merchandise the value of the waste would replace (see 19 CFR 191.22(a)(2)).

Moreover, the general manufacturing drawback contract for steel is published as T.D. 81–74 and includes a portion titled "WASTE" which provides as follows:

> The drawback claimant understands that **no drawback is payable on any waste which results from the manufacturing operation.** Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, the drawback claimant agrees to keep records to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, the drawback claimant agrees to keep records to establish that fact.

(emphasis added).

In distinguishing between byproducts (which are drawback eligible) and waste (which is not) when characterizing residual material from manufacturing or production, Customs has generally utilized the following information about the residual material:

1. The nature of the material of which the residue is composed.
2. The value of the residue as compared to the value of the principal product and the raw material.
3. The use to which the residue is put.
4. The classification of the residue under the tariff law, if imported.
5. Whether the residue is a commodity recognized in commerce.
6. Whether the residue must be subjected to some process to make it saleable.

(See, e.g., HQ 226184 (May 28, 1996).) This analysis of residual material is based on judicial interpretations. In *Patton v. United States*, (159 U.S. 500; 16 S. Ct. 89 (1895)), the Court stated that

> [t]he prominent characteristic running through all these definitions [of waste] is that of refuse, or material that is not susceptible of being used for the ordinary purposes of manufacture. It does not presuppose that the article is absolutely worthless, but that it is unmerchantable, and used for purposes for which merchantable material of the same class is unsuitable.

(*Id*. at 503.) The Supreme Court in *Latimer v. United States*, 223 U.S. 501, 32 S. Ct. 242 (1912), also stated that

> [t]he word [waste] as thus used generally refers to remnants and by-products of small value that have not the quality or utility either of the finished product or of the raw material.

(*Id*. at 504.)

These Supreme Court cases were cited and relied upon in *Mawer-Gulden-Annis (Inc.) v. United States*, (17 CCPA 270, T.D. 43689 (1929)) in which broken green olives, imported in casks in brine and used to make garnishing or sandwich material, were held not to be waste on the basis that the broken green olives "possess[ed] the same food qualities and some of the uses of whole pitted green olives" (17 CCPA at 272). See also, *Willits & Co. v. United States*, (11 Ct. Cust. App. 499, 501–502, T.D. 39657 (1923)), in which certain beef cracklings were held to be waste as material not susceptible of being used in the ordinary operations of a packing house, material not sought or purposely produced as a by-product in the industry, material not processed after it became a waste, and not possessing the characteristics of its original estate.

In distinguishing between valuable and valueless waste, Customs has basically been governed by whether the waste is a marketable product with more than a negligible value (see letters dated July 18, 1949, from the Acting Commissioner of Customs to the Collector, St. Louis, Missouri; May 8, 1952, from the Chief, Division of Drawbacks, Penalties, and Quotas to the Collector, New York, New York (abstracted as T.D. 52997–(B)); December 17, 1954, from the Chief, Division of Classification and Drawbacks, to the Collector, Cleveland, Ohio (abstracted as T.D. 3701–(F))). If the waste is a marketable product with more than a negligible value, the waste is valuable; if not, the waste is valueless.

Holding:

Based the above court cases, Customs decisions, other precedent and T.D. 81–74, drawback will not be paid on steel scrap, trim or waste. The treatment allowing drawback on steel trim, scrap or waste 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.

WILLIAM G. ROSOFF,
(for Myles Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT D]

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

DRA–2–01 RR:CR:DR
HQ 229583RDC
Category: Drawback

ROBIN H. GILBERT, ESQ.
COLLIER, SHANNON, RILL & SCOTT
3050 K Street, NW
Washington, DC 20007

Re: *Precision Specialty Metals, Inc., v. United States*, 182 F.Supp.2d 1314 (Ct. Intl. Trade 2001) and Treasury Decision 81–74.

DEAR MS. GILBERT:

This is in regard to your client Combined Metals of Chicago, LLC. Pursuant to the Court's opinion in *Precision Specialty Metals, Inc. v. United States*, (182 F.Supp.2d 1314 (Ct. Intl. Trade 2001)) and the requirements of 19 USC § 1625(c), this is to inform you of Customs revocation of a treatment accorded certain drawback transactions with regard to drawback per 19 USC § 1313(b). Specifically no drawback will be paid on any steel waste, scrap or trim.

Pursuant to section 1625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agree-

ment Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of the treatment allowing drawback on steel trim, scrap or waste was published on July 31, 2002, in Volume 35, Number 31, of the CUSTOMS BULLETIN. As explained in that notice, the period within which to submit comments on this proposal was until August 30, 2002. No comments were received in response to the notice.

Facts:

The claimant claimed drawback under the general ruling for steel (T.D. 81–74). The Customs drawback specialist processing the claims asked for evidence of export. The claimant provided copies of bills of lading that referred to the export as "scrap steel for re-melting purposes only", "steel scrap sabot", and "stainless steel scrap". Notwithstanding a ruling published as C.S.D. 80–137 which held that the exportation of steel scrap, a valuable waste, did not create eligibility for drawback, Customs liquidated 69 claims granting drawback. Upon discovering that error, Customs denied drawback on the remainder of the claims. The claimant sought judicial review. The court held that the liquidation of those claims was a treatment that could be revoked by Customs only by following the procedure set in 19 USC 1625.

Issue:

Whether the export of steel scrap or any other waste, valuable or valueless, results in entitlement to drawback?

Law and Analysis:

Section 1313(b) of the drawback law (19 USC 1313) provides for substitution of the merchandise used in the manufacture or production of the exported or destroyed article if the imported duty-paid merchandise and substituted merchandise are of the same kind and quality and if both the imported duty-paid merchandise and substituted merchandise are used in manufacture or production by the manufacturer or producer within three years from the date of receipt by the manufacturer or producer of the imported merchandise.

Customs has long held that drawback is not allowable on exports of waste (see, e.g., C.S.D. 80–137 and C.S.D. 82–127 (the former citing *Burgess Battery Co. v. United States*, 13 Cust. Ct. 37, C.D. 866 (1944), and the latter citing a 1932 Customs decision)). In *United States v. Dean Linseed-Oil Co.*, (87 Fed. 453 (2nd Cir. 1898), cert. den., 172 U.S. 647 (1898)), the Government argued that the petitioner was not entitled to any drawback "because oil cake is not a manufactured article, but is waste." (*Id*. at 456.) The court did not dispute that such a defense would have been valid but held that it was not applicable since the Government had considered oil cake to be a manufactured article since 1861.

The court implicitly accepted the Government's position that drawback was unavailable on the exportation of waste by distinguishing the linseed oil cake from tobacco scraps or tobacco clippings, which were held not to be manufactured articles by the U.S. Supreme Court in *Seeberger v. Castro*, (153 U.S. 32 (1894)). Customs has followed this position continuously for many years. See, e.g., C.S.D. 80–137, dated October 22, 1979, wherein Customs held that drawback is not allowable on exportation of valuable waste incurred in the manufacture of rolled steel coils.

The statutory terms "the use of imported merchandise" and "used in the manufacture or production" have been interpreted to exclude valuable waste from such use for nearly 100 years, as shown in *Dean Linseed-Oil* (supra, 87 Fed. 453). Waste which is recovered and which is valuable as waste cannot be said to be used in the manufacture or production of other articles under the relative value concept articulated by the Supreme Court in *National Lead Co. v. United States*, (252 U.S. 140, 144–145 (1920); see also 22 Op. Atty. Gen. 111, 113–114 (1898)).

Since 1936, Customs expressly required that the value of valuable waste be excluded from any manufacturing drawback claim. See T.D. 48490 (1936), which amended Article 1020 of the Customs Regulations of 1931. That regulatory provision has been present in each revision of the drawback regulations. See Article 1041, Customs Regulations of 1937; Section 22.4(a), Customs Regulations of 1943, as amended (1963 ed.) (19 CFR 22.4(a)) and Sections 191.22(a)(2) and 191.32(b), Customs Regulations (19 CFR 191.22(a)(2) and 191.32(b)) (1997 ed.). See also Article 962, Customs Regulations of 1923, which required an applicant for manufacturing drawback to state whether wastage was incurred in the process and the value of such waste.

In fact, the Customs Regulations provide that when waste results from a drawback manufacturing operation, the amount of drawback available may be affected. If the waste

has value, drawback may only be claimed on the basis of the quantity of substituted merchandise appearing in the exported articles, or used in the exported articles, less valuable waste (see 19 CFR 191.22(a)(2)). Under the "appearing in" method, the portion of the imported merchandise resulting in waste would not appear in the exported article and, therefore, the effect would be to reduce the amount of drawback available. Under the "used in, less valuable waste" method, the quantity of imported merchandise used to produce the exported articles is reduced by an amount equal to the quantity of merchandise the value of the waste would replace (see 19 CFR 191.22(a)(2)).

Moreover, the general manufacturing drawback contract for steel is published as T.D. 81–74 and includes a portion titled "WASTE" which provides as follows:

> The drawback claimant understands that **no drawback is payable on any waste which results from the manufacturing operation**. Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, the drawback claimant agrees to keep records to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, the drawback claimant agrees to keep records to establish that fact.

(emphasis added).

In distinguishing between byproducts (which are drawback eligible) and waste (which is not) when characterizing residual material from manufacturing or production, Customs has generally utilized the following information about the residual material:

1. The nature of the material of which the residue is composed.
2. The value of the residue as compared to the value of the principal product and the raw material.
3. The use to which the residue is put.
4. The classification of the residue under the tariff law, if imported.
5. Whether the residue is a commodity recognized in commerce.
6. Whether the residue must be subjected to some process to make it saleable.

(See, e.g., HQ 226184 (May 28, 1996).) This analysis of residual material is based on judicial interpretations. In *Patton v. United States*, (159 U.S. 500; 16 S. Ct. 89 (1895)), the Court stated that

> [t]he prominent characteristic running through all these definitions [of waste] is that of refuse, or material that is not susceptible of being used for the ordinary purposes of manufacture. It does not presuppose that the article is absolutely worthless, but that it is unmerchantable, and used for purposes for which merchantable material of the same class is unsuitable.

(*Id*. at 503.) The Supreme Court in *Latimer v. United States*, 223 U.S. 501, 32 S. Ct. 242 (1912), also stated that

> [t]he word [waste] as thus used generally refers to remnants and by-products of small value that have not the quality or utility either of the finished product or of the raw material.

(*Id*. at 504.)

These Supreme Court cases were cited and relied upon in *Mawer-Gulden-Annis (Inc.) v. United States*, (17 CCPA 270, T.D. 43689 (1929)) in which broken green olives, imported in casks in brine and used to make garnishing or sandwich material, were held not to be waste on the basis that the broken green olives "possess[ed] the same food qualities and some of the uses of whole pitted green olives" (17 CCPA at 272). See also, *Willits & Co. v. United States*, (11 Ct. Cust. App. 499, 501–502, T.D. 39657 (1923)), in which certain beef cracklings were held to be waste as material not susceptible of being used in the ordinary operations of a packing house, material not sought or purposely produced as a by-product in the industry, material not processed after it became a waste, and not possessing the characteristics of its original estate.

In distinguishing between valuable and valueless waste, Customs has basically been governed by whether the waste is a marketable product with more than a negligible value (see letters dated July 18, 1949, from the Acting Commissioner of Customs to the Collector, St. Louis, Missouri; May 8, 1952, from the Chief, Division of Drawbacks, Penalties, and Quotas to the Collector, New York, New York (abstracted as T.D. 52997–(B)); December 17, 1954, from the Chief, Division of Classification and Drawbacks, to the Collector, Cleveland, Ohio (abstracted as T.D. 3701–(F))). If the waste is a marketable product with more than a negligible value, the waste is valuable; if not, the waste is valueless.

Holding:

Based the above court cases, Customs decisions, other precedent and T.D. 81–74, drawback will not be paid on steel scrap, trim or waste. The treatment allowing drawback on steel trim, scrap or waste 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.

WILLIAM G. ROSOFF,
(for Myles Harmon, Acting Director,
Commercial Rulings Division.)

[ATTACHMENT E]

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

DRA–2–01 RR:CR:DR
HQ 229584RDC
Category: Drawback

ROBIN H. GILBERT, ESQ.
COLLIER, SHANNON, RILL & SCOTT
3050 K Street, NW
Washington, DC 20007

Re: *Precision Specialty Metals, Inc., v. United States*, 182 F.Supp.2d 1314 (Ct. Intl. Trade 2001) and Treasury Decision 81–74.

DEAR MS. GILBERT:

This is in regard to your client Calstrip Industries, (formerly Calstrip Steel Corp.). Pursuant to the Court's opinion in *Precision Specialty Metals, Inc. v. United States*, (182 F.Supp.2d 1314 (Ct. Intl. Trade 2001)) and the requirements of 19 USC § 1625(c), this is to inform you of Customs revocation of a treatment accorded certain drawback transactions with regard to drawback per 19 USC § 1313(b). Specifically no drawback will be paid on any steel waste, scrap or trim.

Pursuant to section 1625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of the treatment allowing drawback on steel trim, scrap or waste was published on July 31, 2002, in Volume 35, Number 31, of the CUSTOMS BULLETIN. As explained in that notice, the period within which to submit comments on this proposal was until August 30, 2002. No comments were received in response to the notice.

Facts:

The claimant claimed drawback under the general ruling for steel (T.D. 81–74). The Customs drawback specialist processing the claims asked for evidence of export. The claimant provided copies of bills of lading that referred to the export as "scrap steel for re-melting purposes only", "steel scrap sabot", and "stainless steel scrap". Notwithstanding a ruling published as C.S.D. 80–137 which held that the exportation of steel scrap, a valuable waste, did not create eligibility for drawback, Customs liquidated 69 claims granting drawback. Upon discovering that error, Customs denied drawback on the remainder of the claims. The claimant sought judicial review. The court held that the liquidation of those claims was a treatment that could be revoked by Customs only by following the procedure set in 19 USC 1625.

Issue:

Whether the export of steel scrap or any other waste, valuable or valueless, results in entitlement to drawback?

Law and Analysis:

Section 1313(b) of the drawback law (19 USC 1313) provides for substitution of the merchandise used in the manufacture or production of the exported or destroyed article if the

imported duty-paid merchandise and substituted merchandise are of the same kind and quality and if both the imported duty-paid merchandise and substituted merchandise are used in manufacture or production by the manufacturer or producer within three years from the date of receipt by the manufacturer or producer of the imported merchandise.

Customs has long held that drawback is not allowable on exports of waste (see, e.g., C.S.D. 80–137 and C.S.D. 82–127 (the former citing *Burgess Battery Co. v. United States*, 13 Cust. Ct. 37, C.D. 866 (1944), and the latter citing a 1932 Customs decision)). In *United States v. Dean Linseed-Oil Co.*, (87 Fed. 453 (2nd Cir. 1898), cert. den., 172 U.S. 647 (1898)), the Government argued that the petitioner was not entitled to any drawback "because oil cake is not a manufactured article, but is waste." (*Id*. at 456.) The court did not dispute that such a defense would have been valid but held that it was not applicable since the Government had considered oil cake to be a manufactured article since 1861.

The court implicitly accepted the Government's position that drawback was unavailable on the exportation of waste by distinguishing the linseed oil cake from tobacco scraps or tobacco clippings, which were held not to be manufactured articles by the U.S. Supreme Court in *Seeberger v. Castro*, (153 U.S. 32 (1894)). Customs has followed this position continuously for many years. See, e.g., C.S.D. 80–137, dated October 22, 1979, wherein Customs held that drawback is not allowable on exportation of valuable waste incurred in the manufacture of rolled steel coils.

The statutory terms "the use of imported merchandise" and "used in the manufacture or production" have been interpreted to exclude valuable waste from such use for nearly 100 years, as shown in *Dean Linseed-Oil* (supra, 87 Fed. 453). Waste which is recovered and which is valuable as waste cannot be said to be used in the manufacture or production of other articles under the relative value concept articulated by the Supreme Court in *National Lead Co. v. United States*, (252 U.S. 140, 144–145 (1920); see also 22 Op. Atty. Gen. 111, 113–114 (1898)).

Since 1936, Customs expressly required that the value of valuable waste be excluded from any manufacturing drawback claim. See T.D. 48490 (1936), which amended Article 1020 of the Customs Regulations of 1931. That regulatory provision has been present in each revision of the drawback regulations. See Article 1041, Customs Regulations of 1937; Section 22.4(a), Customs Regulations of 1943, as amended (1963 ed.) (19 CFR 22.4(a)) and Sections 191.22(a)(2) and 191.32(b), Customs Regulations (19 CFR 191.22(a)(2) and 191.32(b)) (1997 ed.). See also Article 962, Customs Regulations of 1923, which required an applicant for manufacturing drawback to state whether wastage was incurred in the process and the value of such waste.

In fact, the Customs Regulations provide that when waste results from a drawback manufacturing operation, the amount of drawback available may be affected. If the waste has value, drawback may only be claimed on the basis of the quantity of substituted merchandise appearing in the exported articles, or used in the exported articles, less valuable waste (see 19 CFR 191.22(a)(2)). Under the "appearing in" method, the portion of the imported merchandise resulting in waste would not appear in the exported article and, therefore, the effect would be to reduce the amount of drawback available. Under the "used in, less valuable waste" method, the quantity of imported merchandise used to produce the exported articles is reduced by an amount equal to the quantity of merchandise the value of the waste would replace (see 19 CFR 191.22(a)(2)).

Moreover, the general manufacturing drawback contract for steel is published as T.D. 81–74 and includes a portion titled "WASTE" which provides as follows:

> The drawback claimant understands that **no drawback is payable on any waste which results from the manufacturing operation.** Unless the claim for drawback is based on the quantity of steel appearing in the exported articles, the drawback claimant agrees to keep records to establish the value (or the lack of value), the quantity, and the disposition of any waste that results from manufacturing the exported articles. If no waste results, the drawback claimant agrees to keep records to establish that fact.

(emphasis added).

In distinguishing between byproducts (which are drawback eligible) and waste (which is not) when characterizing residual material from manufacturing or production, Customs has generally utilized the following information about the residual material:

1. The nature of the material of which the residue is composed.
2. The value of the residue as compared to the value of the principal product and the raw material.

3. The use to which the residue is put.
4. The classification of the residue under the tariff law, if imported.
5. Whether the residue is a commodity recognized in commerce.
6. Whether the residue must be subjected to some process to make it saleable.

(See, e.g., HQ 226184 (May 28, 1996).) This analysis of residual material is based on judicial interpretations. In *Patton v. United States*, (159 U.S. 500; 16 S. Ct. 89 (1895)), the Court stated that

> [t]he prominent characteristic running through all these definitions [of waste] is that of refuse, or material that is not susceptible of being used for the ordinary purposes of manufacture. It does not presuppose that the article is absolutely worthless, but that it is unmerchantable, and used for purposes for which merchantable material of the same class is unsuitable.

(*Id*. at 503.) The Supreme Court in *Latimer v. United States*, 223 U.S. 501, 32 S. Ct. 242 (1912), also stated that

> [t]he word [waste] as thus used generally refers to remnants and by-products of small value that have not the quality or utility either of the finished product or of the raw material.

(*Id*. at 504.)

These Supreme Court cases were cited and relied upon in *Mawer-Gulden-Annis (Inc.) v. United States*, (17 CCPA 270, T.D. 43689 (1929)) in which broken green olives, imported in casks in brine and used to make garnishing or sandwich material, were held not to be waste on the basis that the broken green olives "possess[ed] the same food qualities and some of the uses of whole pitted green olives" (17 CCPA at 272). See also, *Willits & Co. v. United States*, (11 Ct. Cust. App. 499, 501–502, T.D. 39657 (1923)), in which certain beef cracklings were held to be waste as material not susceptible of being used in the ordinary operations of a packing house, material not sought or purposely produced as a by-product in the industry, material not processed after it became a waste, and not possessing the characteristics of its original estate.

In distinguishing between valuable and valueless waste, Customs has basically been governed by whether the waste is a marketable product with more than a negligible value (see letters dated July 18, 1949, from the Acting Commissioner of Customs to the Collector, St. Louis, Missouri; May 8, 1952, from the Chief, Division of Drawbacks, Penalties, and Quotas to the Collector, New York, New York (abstracted as T.D. 52997–(B)); December 17, 1954, from the Chief, Division of Classification and Drawbacks, to the Collector, Cleveland, Ohio (abstracted as T.D. 3701–(F))). If the waste is a marketable product with more than a negligible value, the waste is valuable; if not, the waste is valueless.

Holding:

Based the above court cases, Customs decisions, other precedent and T.D. 81–74, drawback will not be paid on steel scrap, trim or waste. The treatment allowing drawback on steel trim, scrap or waste 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.

WILLIAM G. ROSOFF,
(for Myles Harmon, Acting Director,
Commercial Rulings Division.)

PROPOSED MODIFICATION AND REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF STERILE AND NON-STERILE SUTURE ATTACHED TO A NEEDLE

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

ACTION: Notice of proposed modification and revocation of ruling letters and treatment relating to the classification of sterile and non-sterile suture attached to a needle.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify one and revoke three rulings pertaining to the tariff classification of sterile and non-sterile suture attached to a needle under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before November 1, 2002.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulation and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 572–8784.

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 responsi-

bilities 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 (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 modify one and revoke three rulings pertaining to the tariff classification of sterile and non-sterile suture attached to a needle. Although in this notice Customs is specifically referring to four rulings, New York Ruling (NY) H80134, dated April 26, 2001, Headquarters Ruling (HQ) 560914, dated October 22, 1998, NY 869236, dated December 17, 1991 and HQ 089373, dated October 25, 1991, this notice covers any rulings on this merchandise which may exist but have not be specifically identified. Customs has undertaken reasonable efforts to search existing date 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 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 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 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 NY H80134, NY 869236, and HQ 089373, Customs ruled that nonsterile suture attached to needles was classified in subheadings 4206 and 5609 according to the nature of the thread. Additionally, in HQ 089373, Customs held that sterile suture attached to a needle is classified in subheading 3006.10.00, HTSUS, the provision for "[p]harmaceutical goods specified in note 4 to this chapter: [s]terile surgical

catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental hemostatics." Lastly, in HQ 560914, Customs states that classification of the merchandise in heading 5609, HTSUS, does not preclude duty free treatment under U.S. Note 2(b), subchapter II, Chapter 98, HTSUS. NY H80134, NY 869236, HQ 089373 and HQ 560914 are set forth as Attachment A, B, C and D respectively, to this document.

It is now Customs position that non-sterile suture material attached to a needle is not classified in headings 4602 and 5609, HTSUS, according to the nature of the thread. Neither is it Customs position that sterile suture material attached to a needle is classified in heading 3006, HTSUS. To be classifiable in heading 3006, HTSUS, suture must be sterile catgut or similar suture material. Suture material attached to a needle is not described by the terms of the heading. Furthermore, non-sterile suture attached to a needle is a composite good classifiable at GRI 3(c) in subheading 9018.90.80, HTSUS, as "[I]nstruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: [O]ther instruments and appliances and parts and accessories thereof: [O]ther."

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to modify HQ 560914 and to revoke NY H80134, NY 869236 and HQ 089373, 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 Letters (HQ) 965318, 965845, 965846 and 965847 (*see* Attachments E, F, G and H 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 transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 10, 2002.

GAIL A. HAMILL,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, April 26, 2001.

CLA–2–56:RR:NC:N3:351 H80134
Category: Classification

MR. MICHAEL J. HERTZ
SURGICAL SPECIALTIES CORP.
100 Dennis Drive
Reading, PA 19608

Re: Classification and country of origin determination for unsterilized surgical sutures from Mexico, China, and the Dominican Republic; 19 CFR 102.21(c)(2); 19 CFR 12.130(c); tariff shift.

DEAR MR. HERTZ:

This is in reply to your letter dated April 11, 2001, requesting a classification and country of origin determination for surgical sutures which will be imported unsterilized into the United States and sterilized subsequent to importation.

Facts:

The subject merchandise consists of the following components and packaging materials which will be exported from the United States to three assembly operations, one each in Mexico, China, and the Dominican Republic:

surgical needles (channeled);
surgical needles (drilled end);
black braided silk suture;
black mono nylon suture;
catgut suture (plain and chromatic);
polypropylene suture;
wrapping cards composed of various packaging materials.

From your letter, we assume the following: the silk yarn is extruded in China; the nylon yarn is extruded in the United Kingdom; the catgut yarn is produced in Brazil; and the polypropylene yarn is extruded in the United States.

We assume that by "sutures," you mean the yarns used to make the completed items, as described below. We shall use the term "completed sutures" to mean the assembled yarn-and-needle combination.

The manufacturing operations for the completed sutures are stated as follows: one piece of suture (that is, yarn or catgut) is attached to a needle and the completed item is enclosed in a wrapping card.

Issue:

What are the classification and country of origin of the subject merchandise?

Classification:

You propose classification in subheading 9018.90, Harmonized Tariff Schedule of the United States (HTS) which provides for instruments and appliances used in medical, surgical, dental or veterinary sciences. However, Customs Headquarters has previously ruled that lengths of surgical suture, whether or not sterile, inserted into needles, are classified depending on to the suture material, not in subheading 9018.

The applicable subheading for the completed sutures of polypropylene or nylon will be 5609.00.3000, HTS, which provides for articles of yarn * * * not elsewhere specified or included: of man-made fibers. The general rate of duty will be 5.8 percent ad valorem.

The applicable subheading for the completed sutures of silk will be 5609.00.4000, HTS, which provides for articles of yarn * * * not elsewhere specified or included: other. The general rate of duty will be 5.1 percent ad valorem.

The applicable subheading for the completed sutures of catgut will be 4206.10.3000, HTS, which provides for articles of gut (other than silkworm gut), * * *: Of catgut: If imported for use in the manufacture of sterile surgical sutures. The rate of general rate of duty will be 3.5 percent ad valorem.

There are currently no quota restrictions or visa requirements for any of these products.

Country of Origin—Law and Analysis:

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act. Section 334 of that Act (codified at 19 U.S.C. 3592) provides new rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. On September 5, 1995, Customs published Section 102.21, Customs Regulations, in the Federal Register, implementing Section 334 (60 FR 46188). Thus, effective July 1, 1996, the country of origin of a textile or apparel product shall be determined by sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Paragraph (c)(1) states that "The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced." As the subject merchandise is not wholly obtained or produced in a single country, territory or insular possession, paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states that "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each of the foreign materials incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section:"

Paragraph (e) in pertinent part states that "The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section":

HTSUS	Tariff shift and/or other requirements
5609	(1) If of continuous filaments, including strips, the country of origin of a good classifiable under heading 5609 is the country, territory, or insular possession in which those filaments, including strips, were extruded. (2) If of staple fibers, the country of origin of a good classifiable under heading 5609 is the country, territory, or insular possession in which those fibers were spun into yarns.

As the yarns are stated to be either extruded or spun in a single country, that is, the United States (polypropylene), China (silk), or the United Kingdom (nylon), as per the terms of the tariff shift requirement, country of origin of the completed sutures is conferred in the respective country in which the yarn is produced.

However, there is an exception for textile products from the United States that are sent abroad for processing. Section 12.130(c), Customs Regulations, provides that any product of the United States that is returned after having been advanced in value or improved in condition abroad, or assembled abroad, shall be a foreign article.

Section 12.130, which remains in effect, was originally intended to be used to determine the country of origin of textiles and textile products for quota/visa requirements. In T.D. 90–17, issued February 23, 1990, Customs announced a change in practice and position. This change resulted in Customs using Section 12.130 for quota, duty, and marking purposes when making country of origin determinations for textile goods. In accordance with T.D. 90–17 and Section 12.130(c), the country of origin of the completed sutures made from U.S.-extruded polypropylene, for quota, marking, and duty purposes, is the country in which the final assembly process occurs, Mexico, China, or the Dominican Republic.

However, this position has recently been modified. On July 11, 2000, Customs published T.D. 00–44 in the Federal Register (65 FR 42634), stating that effective October 10, 2000, Customs will no longer apply 19 CFR 12.130(c) for purposes of country of origin marking. Therefore, in accordance with T.D. 00–44, Section 12.130(c) and Section 102.21(c)(4), the country of origin of the completed polypropylene sutures will be the United States. Section 12.130(c) remains in effect for duty and quota purposes and the completed polypropylene sutures are subject to the general rate of duty noted previously.

As the origin of the completed polypropylene sutures for the purposes of marking has been determined to be the United States, it is not required to be marked as a foreign article for purposes of 19 U.S.C. 1304 as previously required. However, separate Federal Trade Commission marking requirements exist regarding country of origin, fiber content, and other information that must appear on many textile items. For more information on the applicability of the requirements under the Textile Fiber Products Identification Act (TFPIA), you should contact the Federal Trade Commission, Textile Program, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Avenue, N.W., Washington, D.C., 20580.

Regarding the completed sutures of catgut (plain and chromatic), Section 134.1(b), Customs Regulations (19 C.F.R. §134.1(b)), defines country of origin as "The country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the 'country of origin' within the meaning of this part."

The attaching of the catgut to the needle constitutes a substantial transformation of the catgut into a new and different article, that is the completed suture, having a new name, character and use. The country of origin of the completed sutures of catgut will be Mexico, China, or the Dominican Republic, depending on where the completed article is formed.

Holding:

The country of origin of the completed sutures of nylon is the United Kingdom. The country of origin of the completed sutures of silk is China. The country of origin of the completed sutures of catgut or polypropylene is Mexico, China, or the Dominican Republic, depending on where the completed suture is formed. However, for marking purposes, the country of origin of the completed polypropylene sutures is the United States.

Your letter states that your company "exports components and packaging materials" to the assembly plants. From the information you have sent, we assume that you are the supplier of these raw materials. Please note that the cost or value of the components and packaging materials will represent an assist under Section 402 of the Tariff Act (TA).

The term "assist" is defined as that which is supplied directly or indirectly by the buyer of imported merchandise, free of charge or at reduced cost, for use in connection with the sale of the merchandise for export to the U.S., under 19 U.S.C. 1401a(h)(1)(A). There are four categories of assists, but only the first, encompassing "materials, components, parts and similar items incorporated in the imported merchandise," is potentially relevant to the instant situation. As an assist, the value of the yarns must be added to the processing costs before the ad valorem rate of duty is applied, pursuant to Section 402, TA. Additionally, please note that the value of any assist will include transportation costs to the place of production. See Section 152.103(d), Customs Regulations (19 C.F.R. §152.103(d)).

You have asked whether any of the finished sutures is subject to antidumping duties or countervailing duties. A list of AD/CVD proceedings at the Department of Commerce (DOC) and their product coverage can be obtained from the DOC website at: http://ia.ita.doc.gov, or you may write to them at the U.S. Department of Commerce, International Trade Administration, Office of Antidumping Compliance, 14th Street and Constitution Avenue, N.W. Washington, DC 20230. Written decisions regarding the scope of AD/CVD orders are issued by the Import Administration in the Department of Commerce and are separate from tariff classification and origin rulings issued by Customs.

Your letter also asks if the left-over components may be returned to the United States duty-free as US goods returned, classifiable in Chapter 98, HTS, which provides for products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad. Only those items that are of U.S. origin may qualify for return under subheading 9801, provided that the documentary requirements of 19 C.F.R. §10.1 are satisfied.

Lastly, you ask if the packaging materials need to be invoiced. Because we are not exactly clear on the meaning of your question, we refer you to Section 141.86 of the Customs regulations (19 C.F.R. 141.86) which discusses invoicing requirements.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 CFR 177.9(b)(1). This section states that a ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177). Should it be subsequently determined that the information furnished is not complete and does not comply with 19 CFR 177.9(b)(1), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted in accordance with 19 CFR 177.2.

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 Mitchel Bayer at 212–637–7086.

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

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, December 17, 1991.

CLA–2–56:S:N:N3G:345 869236
Category: Classification
Tariff No. 5609.00.3000

MS. BETTY MAYLOR
IMPORT CUSTOMS MANAGER
LEP PROFIT INTERNATIONAL, INC.
440 McClellan Highway East
Boston, MA 02128

Re: The tariff classification of a surgical suture from England.

DEAR MS. MAYLOR:

In your letter dated November 11, 1991, on behalf of Deknatel Division, Pfizer Hospital Products Group, Inc., Fall River, Massachusetts, you requested a tariff classification ruling.

The sample submitted is a non-absorbable polypropylene surgical suture composed of textile monofilament attached to two surgical needles constructed of stainless steel. This assembly is wound around a foam carrier and sealed in a blister pack.

The applicable subheading for the surgical suture will be 5609.00.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included: Of man-made fibers.. The rate of duty will be 9 percent ad valorem.

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

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

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, October 25, 1991.

CLA–2 CO:R:C:M 089373 KCC
Category: Classification
Tariff No. 3006.10.00 And 4206.10.30

PETER J. FITCH, ESQ.
FITCH, KING AND CAFFENTZIS
35 Beach Road
Monmouth Beach, NJ 07750

Re: Sterile and Non-Sterile Sutures, With or Without Needles; Of-Gut and Other Materials; GRI 1; 087660; 849025; 9018.90.80; Chapter Note 3, Chapter 30, Section VI; EN 30.06; EN 90.18; Nippon Kogasku (USA), Inc.; C.J. Tower & Sons; House Report No. 98–1015; Dorland's Illustrated Medical Dictionary; suture; 730999.

DEAR MR. FITCH:

This is in response to your letter dated May 10, 1991, on behalf of Davis & Geck, a Division of American Cyanamid Company, concerning the tariff classification of sterile and non-sterile sutures with or without needles under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Facts:

Davis & Geck, a Division of American Cyanamid Company, imports sterile and non-sterile sutures with and without needles into the U.S. These importations are made on a continuing basis primarily at the port of New York.

Until Headquarters Ruling Letter (HRL) 087660 dated November 5, 1990, we had held that sterile and non-sterile needled sutures were classified in item 709.27, Tariff Schedules of the United States (TSUS), as medical, dental, surgical, and veterinary instruments, including parts thereof * * * Other * * * Needles * * * Other * * * Other. See, C.I.E. 894/55 dated September 6, 1955; TC 426.85 dated May 21, 1965; HRL 079455 dated March 5, 1987; and HRL 082498 dated March 14, 1989.

However, HRL 087660 found that sterile needled sutures were classified in item 495.10, TSUS, as surgical sutures, surgical suture materials, all the foregoing which are sterile, and that non-sterile needled sutures were classified in item 792.24, TSUS (formerly item 792.22, TSUS), which provides for articles not specially provided for of gut * * * if imported for use in the manufacture of sterile surgical sutures. We based our opinion on the descriptive language in the legislative history provided in the Trade and Tariff Act of 1984, which amended the TSUS, in part by changing the duty rates applicable to articles of gut, if imported for use in the manufacture of surgical sutures. The House Report No. 98–1015 stated in pertinent part:

> * * * Raw catgut is generally sold in coils of varying lengths. When used in the manufacture of sutures, the gut is cut to the appropriate length and a needle is added, resulting in a nonsterilized suture classified in item 792.22. If sterilized and sterile-packed in inner and outer packages prior to importation, the suture would be classified in item 495.10 * * *

The Senate Report (No. 98–308) contains virtually identical language. The language cited above, plus Headnote 1(i) of Schedule 7, Part 2, Subpart B, TSUS, excluding from that subpart articles falling within the medical supplies provision of part 13C of Schedule 4, make it patently obvious that sterile sutures are properly classifiable under item 495.10, TSUS, whether with or without needles.

However, New York Ruling (NYR) 849025 dated February 6, 1990, held that needles with attached sutures are classified in the HTSUSA under subheading 9018.90.80, HTSUSA, as other instruments used in medical, surgical or veterinary sciences.

You are requesting that sterile sutures, whether or not needled, are classified under subheading 3006.10.30, HTSUSA, and that non-sterile needled sutures "of gut" be classified under subheading 4206.10.30, HTSUSA. Additionally, you request that non-sterile needled sutures consisting of other materials are classified according to the material of the suture ligature present in each suture.

Issue:

What is the proper tariff classification of sterile and un– sterile sutures with or without needles under the HTSUSA?

Law and Analysis:

The classification of merchandise under the HTSUSA is governed by the General Rules of Interpretation (GRI's). GRI 1, HTSUSA, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes and * * * according to the following provisions * * *" In this case, it appears that the sterile needled sutures are classifiable under two headings:

3006	Pharmaceutical products specified in note 3 to this chapter * * *
3006.10.00	Sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental hemostatics.
*	* * * * * *
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof * * *
9018.90.80	Other instruments and appliances and parts and accessories thereof * * * Other.

The non-sterile needled sutures appear to be classifiable under subheading 9018.90.80, HTSUSA, and:

4206	Articles of gut (other than silkworm gut), of goldbeater's skin, of bladders or of tendons * * *
4206.10.30	Of catgut * * *If imported for use in the manufacture of sterile surgical sutures.

Chapter Note 3, Chapter 30, Section VI, HTSUSA, states that heading 3006, HTSUSA, "applies only to the following, which are to be classified in that heading and in no other heading of the tariff schedule:

(a) Sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure;. * * *"

The Explanatory Note 30.06 of the Harmonized Commodity Description and Coding System (HCDCS), states that sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure in heading 3006, HTSUSA, covers all kinds of ligatures for surgical sutures, provided they are sterile. The materials used for such ligatures include:

(a) catgut (processed collagen from the intestines of cattle, sheep or other animals);
(b) natural fibres (cotton, silk, linen);
(c) synthetic polymer fibres, such as polyamides (nylons), polyesters; (d) metals (stainless steel, tantalum, silver, bronze).

This heading excludes non-sterile suture material. Non-sterile suture material is classified according to its nature, i.e., catgut (heading 42.06). HCDCS, Vol. 2, p. 440–441.

Additionally, Explanatory Note 90.18 states that heading 9018 does not cover sterile catgut and other sterile material for surgical sutures, sterile laminaria and sterile laminaria tents (heading 30.06). HCDCS, Vol. 4, p. 1488. The Explanatory Notes, although not dispositive, are to be looked to for the proper interpretation of the HTSUSA. 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The term "suture material" is not defined in the HTSUSA or the HCDCS. Tariff terms are construed in accordance with their common and commercial meaning. Nippon Kogasku (USA), Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982).

The descriptive language in the legislative history states that nonsterilized sutures are cut to length catgut with an attached needle. See, House Report No. 98–1015. Moreover, Dorland's Illustrated Medical Dictionary, 27th Edition defines a suture as "material used in closing a surgical or traumatic wound with stitches; a stitch or series of stitches made to secure apposition of the edges of a surgical or accidental wound; used also as a verb to indi-

cate the application of such stitches." Dorland's Illustrated Medical Dictionary, 27th Edition, p. 1620 (1988). Dorland's Illustrated Medical Dictionary, 27th Edition defines a ligature as "any substance, such as catgut, cotton, silk, or wire, used to tie a vessel or strangulate a part." Id, p. 935. Additionally, we have held that the addition of surgical thread to a needle creates an article known as a suture which is suitable for use in surgery to bind body tissue. See, HRL 730999 dated December 12, 1988 (regarding the country of origin marking requirements for sutures).

Based on the legislative history and above cited definitions, we are of the opinion that "suture material" is suturing material such as catgut, synthetic polymer fibres, metal, etc., and an attached needle. Therefore, the sterile needled sutures of any type of material would be classified under subheading 3006.10.00, HTSUSA, as "* * * similar sterile suture materials. * * *" This tariff provision covers all types of suturing material which is sterile. HCDCS, Vol. 2, p. 440.

Additionally, sterile surgical catgut and similar sterile suture material without needles is also classified in subheading 3006.10.00, HTSUSA.

Based on Explanatory Note 30.06, it appears that non-sterile suture material without needles is classified according to the nature of the material. HCDCS, Vol. 2, p. 441. Non-sterile suture material with and without needles will be classified under different tariff provisions depending on the type of material used, i.e., non-sterile suture material of catgut will be classified under subheading 4206.10.30, HTSUSA, as Articles of gut * * * Of catgut * * * If imported for use in the manufacture of sterile surgical sutures.

Holding:

Sterile needled sutures are classified under subheading 3006.10.00, HTSUSA. Sterile ligature suturing material without needles is also classified under subheading 3006.10.00, HTSUSA.

Non-sterile suture material of catgut with and without needles is classified under subheading 4206.10.30, HTSUSA.

Additionally, other non-sterile suture material with and without needles should be classified according to the type of material used in the suture.

Accordingly, NYR 849025 is revoked pursuant to section 177.9, Customs Regulations (19 CFR 177.9).

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, October 22, 1998.

CLA–2 RR:CR:SM 560914 KSG
Category: Classification

PORT DIRECTOR
U.S. CUSTOMS SERVICE
San Juan, Puerto Rico
ATTN: CST–455

Re: Internal Advice 32/97; Sutures; U.S. Note 2(b), subchapter II, Chapter 98.

DEAR PORT DIRECTOR:

This is in reference to your Request for Internal Advice (I.A. 32/97) dated March 23, 1998, asking if non-sterile surgical sutures with needles are eligible for a duty preference under U.S. Note 2(b), subchapter II, Chapter 98, of the Harmonized Tariff Schedule of the United States ("HTSUS").

Facts:

According to information you have provided, surgical sutures with needles (non-sterile) are being imported into the Port of San Juan by Davis & Gech, Inc. and by U.S. Surgical

Corporation. In your fax of October 5, 1998, you indicate that both the silk and man-made yarns from which the sutures are made may be of U.S. or foreign origin. You also state that the needles may be of U.S. or foreign origin. The different type of yarns used include: catgut; man-made absorbable gut; nylon dacron and silk. You state that the yarns are cut to length and dressed in Puerto Rico. You also state that the yarns are sent to the Dominican Republic for assembly with the needles (by threading) and retail packaging. The assembled sutures and needles are returned non-sterilized.

Your office takes the position that the sutures are textile articles and therefore, not eligible for duty-free treatment under U.S. Note 2(b), subchapter II, Chapter 98, HTSUS.

Issue:

Whether the assembled sutures and needles are eligible for duty-free treatment under U.S. Note 2(b), subchapter II, Chapter 98, HTSUS.

Law and Analysis:

Section 222 of the Customs and Trade Act of 1990 (Public Law 101–382) amended U.S. Note 2, subchapter II, Chapter 98, HTSUS ("U.S. Note 2(b)"), to provide for the duty-free treatment of articles (other than textile and apparel articles, and petroleum and petroleum products) which are assembled or processed in a Caribbean Basin Economic Recovery Act beneficiary country wholly of fabricated components or ingredients (except water) of U.S. origin.

U.S. Note 2(b), provides as follows:

> (b) No article (except a textile article, apparel article, or petroleum, or any product derived from petroleum, provided for in heading 2709 or 2710) may be treated as a foreign article, or as subject to duty, if—
>
> (i) the article is—
>
> (A) assembled or processed in whole of fabricated components that are a product of the United States, or
>
> (B) processed in whole of ingredients (other than water) that are a product of the United States, in a beneficiary country; and
>
> (ii) neither the fabricated components, materials or ingredients, after exportation from the United States, nor the article itself, before importation into the United States, enters the commerce of any foreign country other than a beneficiary country.

As used in the note, the term "beneficiary country" means a country listed in General Note 7(a), HTSUS. The Dominican Republic is listed in General Note 7(a), HTSUS, as a designated beneficiary country ("B.C.").

You indicate that both the yarn and the needles may be of U.S. or foreign origin. As clearly set forth in the language of U.S. Note 2(b), a good is entitled to duty-free treatment only if all the components or ingredients are of U.S. origin. We note that under the textile rules of origin set forth in section 102.21, Customs Regulations (19 CFR 102.21), if the sutures are produced in the U.S. from foreign-origin yarn sourced from one country, the origin of the sutures would be the country of origin of the yarn. In such circumstances, the sutures would not be of U.S. origin and therefore, would be ineligible for U.S. Note 2(b) treatment. The issue presented is whether the sutures which are of U.S. origin are considered textiles articles which are expressly precluded from receiving duty-free treatment under U.S. Note 2(b). Customs stated in Treasury Decision ("T.D.") 91–88, dated October 18, 1991, that:

> It is Customs position that the controlling factor in determining whether articles constitutes "textile" and "apparel" articles for purposes of Note 2(b) is whether such articles (other than footwear and parts of footwear) are subject to textile agreements.

If an article is subject to a textile agreement, it is indicated in the HTSUS by the inclusion of a textile category number in the applicable tariff provision.

The non-sterile sutures made from man-made yarn are classified at subheading 5609.00.30.00, HTSUS, which provides for articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included: of man-made fibers. The non-sterile sutures made from silk yarn are classified at subheading 5609.00.40.00, HTSUS, which provides for articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included: other. Neither of these tariff provisions includes a textile category number. Therefore, the non-sterile sutures are not subject to textile agreements and are not excluded from duty-free treatment under U.S. Note 2(b) as textile articles.

Holding:

The imported sutures with needles are eligible for duty-free treatment under U.S. Note 2(b), subchapter II, Chapter 98, HTSUS, provided all the components and materials thereof are of U.S. origin and the materials were exported directly from the U.S. to the B.C. and the assembled goods were imported directly to the U.S. from the B.C. The documentation requirements set forth in telex 9264071 (copy enclosed) also must be met.

This decision should be mailed by your office to the internal advice requester no later than 60 days from the date of this letter. On that date the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act and other public access channels.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

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

CLA–2 RR:CR:GC 965318AM
Category: Classification
Tariff No. 9018.90.80

MR. JASON M. WAITE
ALSTON & BIRD LLP
601 Pennsylvania Avenue, N.W.
North Building, 10th Floor
Washington, DC 20004–2601

Re: NY H80134 revoked; non-sterile suture attached to a suture needle in a cardboard wrapper.

DEAR MR. WAITE:

This is in reference to your letter of April 18, 2002, on behalf of Surgical Specialties, requesting reconsideration of New York Ruling (NY) H80134, dated April 26, 2001, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of non-sterile suture attached to a suture needle in a cardboard wrapper. We have also considered arguments you made in a telephone conference on July 31, 2002. In NY H80134, we determined that these goods were classifiable according to the material of the suture, headings 4206 and 5609, HTSUS, the provisions for "articles of catgut" and "articles of yarn, strip or the like * * *" respectively.

In your letter, you request reconsideration of the classification of the merchandise and further clarification of the eligibility of the merchandise for duty free treatment and marking issues. We have determined that NY H80134 must be revoked. In addition, Headquarters Ruling (HQ) 560914, dated October 22, 1998, NY 869236, dated December 17, 1991 and HQ 089373, dated October 25, 1991, are modified or revoked in HQs 965847, 965846 and 965845 of this date.

Facts:

As stated in NY H80134, the subject merchandise consists of the following components and packaging materials which will be exported from the United States to three assembly operations, one each in Mexico, China, and the Dominican Republic: surgical needles (channeled); surgical needles (drilled end); black braided silk suture; black mono nylon suture; catgut suture (plain and chromatic); polypropylene suture; wrapping cards composed of various packaging materials. The silk yarn is extruded in China; the nylon yarn is extruded in the United Kingdom; the catgut is produced in Brazil; and the polypropylene yarn is extruded in the United States. To assemble the needled suture for importation into

the United States, one piece of yarn or catgut is attached to a needle and the completed item is enclosed in a wrapping card.

Counsel claims that the instant merchandise is described by subheading 9018.32.00, the provision for "[I]nstruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Tubular metal needles and needles for sutures and parts and accessories thereof."

Issues:

1. Whether non-sterile suture attached to a needle is classifiable as a medical instrument or according to the material of the suture?
2. What is the country of origin of the merchandise?

Law and Analysis:

Classification

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

GRI 2(b) requires that goods consisting of different materials be classified according to the principles of GRI 3. GRI 3(a) requires that amongst competing headings, the most specific heading be used, but headings which refer to part only of the goods are equally specific. GRI 3(b), provides that composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. Explanatory Note 3(b)(VIII) to GRI 3(b) states that essential character may 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." GRI 3(c) requires that if the essential character can not be determined, the good is classified in the latter heading.

The following headings and subheadings are relevant to the classification of this product:

4206	Articles of gut (other than silkworm gut), of goldbeater's skin, of bladders or of tendons:
* * * * * * *	
5609	Articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included:
* * * * * * *	
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof:
	Syringes, needles, catheters, cannulae and the like; parts and accessories thereof.
9018.32.00	Tubular metal needles and needles for sutures and parts and accessories thereof
9018.90	Other instruments and appliances and parts and accessories thereof:
9018.90.80	Other

EN 90.18(I)(A), lists needles under "[I]nstruments which may be used under the same names for several purposes (e.g., needles, lancets, trocars, surgical knives and scalpels of

all kinds, sounds, specula, mirrors and reflectors, scissors, shears, forceps, pliers, chisels, gouges, mallets, hammers, saws, scrapers, spatulae, cannulae, catheters, suction tubes, etc., cauteries, tweezers, dressing, swab, sponge or needle holders, retractors, dilators, clips, syringes of all kinds)."

The instant merchandise consists of two different materials *prima facie* classified in two different provisions: the needle of heading 9018, HTSUS, and the thread of headings 4206 and 5609, HTSUS. Neither heading can be considered more specific as they both describe the good in part. A cost breakdown submitted by requestor shows that the needle constitutes the item with the most value. Also, the needle contributes more of the weight of the item.

However, the role of the suture material to the item as a whole outweighs the role of the needle. The *raison d'etre* of the merchandise is to keep a wound closed. The thread is the portion of the merchandise that holds the wound together; the needle is simply the vehicle for placing the thread where it needs to go. Furthermore, the trade recognizes that the role of the suture is paramount. For instance, completed sterilized suture and needle is listed in the 2001 Medical Device Register, Medical Economics, Inc., under "Sutures." The listings include "monofiliment suture with needle of same diameter as suture and non-absorbable, synthetic, polyamide suture in 8 sizes with full range of needle types." The listing for "Needles-Suture" describes only disposable and re-usable suture needles. Commercially, the completed and sterilized item is known as a suture. Some sutures are packaged attached to a needle and some are not. Each component of the instant merchandise appears to be equally "essential" under GRI 3(b). Hence, the merchandise is classifiable in heading 9018, HTSUS under GRI 3(c).

At GRI 6, the issue remains whether the suture material can be regarded as a part or accessory of the needle, or whether the entire article is an "other" medical instrument. An article may be classified as a part of another article when, in its imported condition, it has been so far advanced so as to be dedicated to and commercially fit for use with that article and incapable of being made into more than one article or class of articles. See *Avin Industrial Products Co. v. United States*, 72 Cust. Ct. 43, C.D. 4503, 376 F. Supp. 879, reh. denied, 72 Cust. Ct. 147, C.D. 4522 (1974). See also *Haraeus-Amersil, Inc. v. United States*, 640 F. Supp. 1331 (CIT 1986) (so advanced that nothing remained to be done except cut precious metal contact tape apart); *EM Chemicals v. United States*, 728 F. Supp. 723 (CIT 1989) (liquid crystal used in liquid crystal displays imported in advanced manufactured state such that the product as imported is ready to be a part of the LCD by being sandwiched between two 'plates'). The term "accessory" is not defined in either the tariff schedule or the Explanatory Notes. An accessory is generally an article which is not necessary to enable the goods with which it is used to fulfill their intended function. HQ 087704, September 27, 1990.

The suture, as discussed above, can not be considered of secondary importance to the article as a whole. It therefore cannot be described as an accessory to the needle. Nor can it be described as part of the needle. The thread, although attached to the needle may or may not be used with it. It may be cut and used alone as a ligature, to tie off a blood vessel, or it may be used as ordinary thread. In fact, suture material is also sterilized and packaged without needles for a myriad of uses. Without the necessary "dedication to use" with a suture needle, the attached suture material may not be described as a part of the needle. Rather, the entire suture and needle is classified as an "other" medical instrument in subheading 9018.90.80.

Country of Origin

With regard to the sutures that are assembled in Mexico, the NAFTA Marking Rules (19 CFR Part 102) are applicable. Section 102.11, Customs Regulations (19 CFR 102.11), sets forth the required hierarchy for determining whether a good is a good of a NAFTA country for the purposes of country of origin marking and determining the rate of duty and staging category applicable to a NAFTA originating good as set out in Annex 302.2. Paragraph (a) of this section states that the country of origin of a good is the country in which:

(1) The good is wholly obtained or produced;
(2) The good is produced exclusively from domestic materials; or
(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in section 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

"Foreign material" is defined in 19 CFR 102.1(e) as "a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced." Sections 102.11(a)(1) and 102.11(a)(2) do not apply to the facts presented in this case because the suture is not processed solely in Mexico and therefore the imported article is neither wholly obtained or produced, nor produced exclusively from domestic materials. Since an analysis of sections 102.11(a)(1) and 102.11(a)(2) will not yield a country of origin determination, we look to section 102.11(a)(3).

Section 102.11(a)(3) provides that the country of origin is the country in which "each foreign material incorporated in that good undergoes an applicable change in tariff classification as set forth in 19 CFR 102.20. * * *"

The applicable tariff shift rule found in section 102.20(q) provides as follows:

HTSUS	Tariff Shift and/or other requirements
9018.90	A change to subheading 9018.90 from any other subheading, except from subheading 9001.90 or synthetic rubber classified in heading 4002 when resulting from a simple assembly; or A change to defibrillators from printed circuit assemblies, except when resulting from a simple assembly

In the instant case, the Mexican assembly operation results in a change to subheading 9018.90 from another subheading for both the U.S.-origin needle (subheading 9018.32) and the various threads used. Accordingly, the tariff shift rule is satisfied and the country of origin of the finished sutures assembled in Mexico for marking purposes is Mexico.

With regard to the assembly operations that occur in China and the Dominican Republic, the substantial transformation standard is applied to determine the country of origin. Section 134.1(b), Customs Regulations (19 CFR 134.1(b), provides that; "country of origin' means the country of manufacture, production, or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the 'country of origin' for marking purposes."

A substantial transformation occurs when a new and different article of commerce emerges from a process with a new name, character or use different from that possessed by the article prior to processing. *United States v. Gibson-Thomsen Co., Inc.*, 27 CCPA 267, C.A.D. 98 (1940).

Customs ruled in Headquarters Ruling Letter ("HRL") 730999, dated December 12, 1988, that imported surgical needles attached to thread in the U.S. and thereby made into sutures suitable for use in cardiovascular surgery were substantially transformed in the U.S. *See also* HRL 561167, dated December 14, 1998, and HRL 554957, dated March 7, 1990. Based on this analysis, the assembly operations involved in this case would result in a substantial transformation and the country of assembly, either China or the Dominican Republic, would be the country of origin for marking purposes.

Holding:

Non-sterile suture material attached to a needle will be classified in subheading 9018.90.80, HTSUS, as "[I]nstruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: [O]ther instruments and appliances and parts and accessories thereof: [O]ther." The country of origin for marking purposes of the non-sterile suture material attached to a needle assembled in Mexico is Mexico. The country of origin for marking purposes of the non-sterile suture material attached to a needle assembled in China or the Dominican Republic is those respective countries for marking purposes.

Effect on Other Rulings:

NY H80139 is revoked.

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

[ATTACHMENT F]

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

CLA–2 RR:CR:GC 965845 AM
Category: Classification
Tariff No. 9018.90.80

MR. PETER J. FITCH
FITCH, KING AND CAFFENTZIS
35 Beach Road
Monmouth Beach, NJ 07750

Re: HQ 089373 revoked: sterile and non-sterile sutures with or without needles.

DEAR MR. FITCH:

This is in reference to Headquarters Ruling Letter (HQ) 089373, issued to you on October 25, 2002, on behalf of Davis & Geck, a Division of American Cyanamid Company, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of sterile and non-sterile sutures with or without needles. In HQ 089373, we determined that: sterile needled sutures are classified under subheading 3006.10.00, HTSUS, the provision for Pharmaceutical goods specified in note 4 to this chapter: Sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental hemostatics." Non-sterile suture material of catgut with and without needles is classified under subheading 4206.10.30, HTSUS, the provision for Articles of gut (other than silkworm gut), of goldbeater's skin, of bladders or of tendons: Of catgut: If imported for use in the manufacture of sterile surgical sutures." Other non-sterile suture material with and without needles is classified according to the type of material used in the suture in heading 5609, HTSUS, the provisions for "articles of yarn, strip or the like * * *."

In the process of reviewing a similar matter, we have determined that HQ 089373 must be revoked. In addition, New York Ruling (NY) H80134 dated April 26, 2001, HQ 560914, dated October 22, 1998, NY 869236, dated December 17, 1991 are revoked in HQs 965318, 965847 and 965846 of this date.

Facts:

As stated in HQ 089373, the subject merchandise consists of sterile and non-sterile sutures with and without needles. The Trade and Tariff Act of 1984 (P.L. 98–573) replaced item 792.22, of the Tariff Schedules of the United States (TSUS), the provision for articles of gut, with two new items. Item 792.24 provided the same preferential duty rate for "articles of gut imported for use in the manufacture of surgical sutures" as that accorded to item 495.10, TSUS, the provision for sterile surgical sutures and materials. New item 792.26, TSUS, provides for "other articles of gut." In so doing, the House of Representatives Ways and Means Committee used the following language in recommending the bill:

> When used in the manufacture of sutures, the gut is cut to the appropriate length and a needle is added, resulting in a nonsterile suture, classified in item 792.22 ["articles of gut"]. If sterilized and sterile-packed in inner and outer packages prior to importation, the suture would be classified in item 495.10 ["articles of gut imported for use in the manufacture of surgical sutures"]. House Report No. 98–1015, to accompany H.R. 6064, Sept. 18, 1984.

Specifically disregarding the legislative history cited above, HQ 082498, dated March 14, 1989, held that a sterile needle with suture attached was classified in item 709.27, TSUS, the provision for medical instruments. HQ 087660, dated November 5, 1990, modified HQ 082498, in accordance with the legislative history, classifying sterile needles with suture attached in item 495.10, the provision for surgical sutures, and non-sterile suture with a needle attached in item 792.24,TSUS, the provision for "articles * * * of gut, if imported for use in the manufacture of sterile surgical sutures."

In 1988, the HTSUS was adopted. However, rulings on the instant matter continued to discuss the legislative history of the Tariff Act of 1984. For instance, HQ 089373, dated October 25, 1991, cited the sentence above that "[W]hen used in the manufacture of sutures, the gut is cut to the appropriate length and a needle is added, resulting in a non-sterile suture, * * *." There, Customs ruled that sterile needled sutures are classified in

subheading 3006.10.00, HTSUS as "sterile suture material" and non-sterile needled sutures are classified according to the material of the suture thread, such as in subheading 4206.10.30, HTSUS, for "articles of gut."

Issue:

Whether non-sterile suture attached to a needle is classifiable as a medical instrument or according to the material of the suture?

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 2(b) requires that goods consisting of different materials be classified according to the principles of GRI 3. GRI 3(a) requires that amongst competing headings, the most specific heading be used, but headings which refer to part only of the goods are equally specific. GRI 3(b), provides that composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The EN to GRI 1 part (V) explains that the expression "provided such headings or Notes do not otherwise require" makes it clear that "the terms of the headings and any relative Section or Chapter Notes are paramount, i.e., they are the first consideration in determining classification. For example, in Chapter 31, the Notes provide that certain headings relate only to particular goods. Consequently those headings cannot be extended to include goods which otherwise might fall there by reason of the operation of Rule 2 (b)." Explanatory Note 3(b)(VIII) to GRI 3(b) states that essential character may 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." GRI 3(c) requires that if the essential character can not be determined, the good is classified in the latter heading.

The following headings and subheadings are relevant to the classification of this merchandise:

3006	Pharmaceutical goods specified in note 4 to this chapter:
3006.10.00	Sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure; sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental hemostatics
* * * * * * *	
4206	Articles of gut (other than silkworm gut), of goldbeater's skin, of bladders or of tendons:
* * * * * * *	
5609	Articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included:
* * * * * * *	
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof:
9018.90	Other instruments and appliances and parts and accessories thereof:
9018.90.80	Other

Note 4 to Chapter 30, HTSUS, specifies, *inter alia*: "[S]terile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure * * *." EN 30.06 states, in pertinent part, "This item covers all kinds of ligatures for surgical sutures, provided they are sterile. * * *" The materials used for such ligatures include catgut, natural fibers, synthetic fibers and metals.

Subheading 3006.10.00, HTSUS specifies "Sterile surgical catgut" and "similar sterile suture materials." Item 495.10, TSUS, was the provision for "articles of gut imported for use in the manufacture of surgical sutures". HQ 087660, which classified sterile needles with suture attached in item 495.10, TSUS, interpreted the phrase "articles of gut" to include the suture material with a needle.

In an attempt to follow the history of classifying sterile suture and needle in the provision for suture material, HQ 089373 ruled that sterile suture and needle is classified in subheading 3006.10.00, HTSUS, the provision for "sterile suture materials." There, we stated "[B]ased on the legislative history and above cited definitions, we are of the opinion that "suture material" is suturing material such as catgut, synthetic polymer fibres, metal, etc. and an attached needle." This statement is incorrect. The terms "similar suture material" can not be twisted to refer to anything but materials, ie. catgut, synthetic polymer fibres, metal, etc. The sterile needle combination can not be classified in heading 3006, HTSUS, by the terms of the heading itself. EN 30.06, which defines the scope of the heading as covering all kinds of "ligatures for surgical sutures," supports this view. Ligatures are "any substance, such as catgut, cotton, silk, or wire, used to tie a vessel or strangulate a part." *Dorland's Illustrated Medical Dictionary*, 27th Edition, p. 935. Furthermore, the EN to GRI 1 warns against expanding a heading clearly limited in this manner. Here, the heading is clearly limited, by its terms and by Chapter note 4, to sterile suture material. It does not include needled sutures because needles are not "suture materials" in the way that gut is suture material.

EN 90.18(I)(A), lists needles under "[I]nstruments which may be used under the same names for several purposes (e.g., needles, lancets, trocars, surgical knives and scalpels of all kinds, sounds, specula, mirrors and reflectors, scissors, shears, forceps, pliers, chisels, gouges, mallets, hammers, saws, scrapers, spatulae, cannulae, catheters, suction tubes, etc., cauteries, tweezers, dressing, swab, sponge or needle holders, retractors, dilators, clips, syringes of all kinds)."

Sterile and non-sterile needled sutures consist of two different materials *prima facie* classified in three different provisions: the needle of heading 9018, HTSUS, and the thread of headings 3006, 4206 and 5609, HTSUS. Neither heading can be considered more specific as they both describe the good in part. The needle may have greater value and weight than the thread.

However, the role of the suture material to the item as a whole outweighs the role of the needle. The *raison d'etre* of the merchandise is to keep a wound closed. The thread is the portion of the merchandise that holds the wound together; the needle is simply the vehicle for placing the thread where it needs to go. Furthermore, the trade recognizes that the role of the suture is paramount. For instance, completed sterilized suture and needle is listed in the 2001 Medical Device Register, Medical Economics, Inc., under "Sutures." The listings include "monofiliment suture with needle of same diameter as suture and non-absorbable, synthetic, polyamide suture in 8 sizes with full range of needle types." The listing for "Needles-Suture" describes only disposable and re-usable suture needles. Commercially, the completed and sterilized item is known as a suture. Some sutures are packaged attached to a needle and some are not. Each component of the instant merchandise appears to be equally "essential" under GRI 3(b). Hence, the merchandise is classifiable in heading 9018, HTSUS under GRI 3(c).

Holding:

Sterile and non-sterile suture material attached to a needle will be classified in subheading 9018.90.80, HTSUS, as "[I]nstruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: [O]ther instruments and appliances and parts and accessories thereof: [O]ther." Sterile suture material

continues to be classified in subheading 3006.10.00, HTSUS, and non-sterile suture materials continue to be classified according to the nature of the material.

Effect on Other Rulings:

HQ 089373 is revoked.

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

[ATTACHMENT G]

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

CLA–2 RR:CR:GC 965846 AM
Category: Classification
Tariff No. 9018.90.80

MS. BETTY MAYLOR
IMPORT CUSTOMS MANAGER
LEP PROFIT INTERNATIONAL, INC.
440 McClellan Highway
East Boston, MA 02128

Re: NY 869236 Revoked; non-sterile suture attached to a suture needle.

DEAR MS. MAYLOR:

This is in reference New York Ruling Letter (NY) 869236, issued to you on December 17, 1991, on behalf of Deknatal Division, Pfizer Hospital Products Group, Inc., concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of non absorbable polypropylene surgical suture attached to a suture needle wound around a foam carrier and sealed in a blister pack. In NY 869236, we determined that these goods were classifiable according to the material of the suture, in subheading 5609.00.30, HTSUS, the provision for "articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included: Of man-made fibers."

We have also reviewed NY H80134, dated April 26, 2001, Headquarters Ruling (HQ) 560914, dated October 22, 1998 and HQ 089373, dated October 25, 1991. Those rulings are revoked or modified in HQs 965318, 965847 and 965845 of this date.

Facts:

As stated in NY 869236, the subject merchandise consists of non-absorbable polypropylene surgical suture composed of textile monofilament attached to two surgical needles constructed of stainless steel wound around a foam carrier and sealed in a blister pack.

Issue:

Whether unsterile suture attached to a needle is classifiable as a medical instrument or according to the material of the suture?

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

GRI 2(b) requires that goods consisting of different materials be classified according to the principles of GRI 3. GRI 3(a) requires that amongst competing headings, the most specific heading be used, but headings which refer to part only of the goods are equally specific. GRI 3(b), provides that composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. Explanatory Note 3(b)(VIII) to GRI 3(b) states that essential character may 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." GRI 3(c) requires that if the essential character can not be determined, the good is classified in the latter heading.

The following headings and subheadings are relevant to the classification of this product:

5609	Articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included:
* * * * * * *	
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof:

EN 90.18(I)(A), lists needles under "[I]nstruments which may be used under the same names for several purposes (e.g., needles, lancets, trocars, surgical knives and scalpels of all kinds, sounds, specula, mirrors and reflectors, scissors, shears, forceps, pliers, chisels, gouges, mallets, hammers, saws, scrapers, spatulae, cannulae, catheters, suction tubes, etc., cauteries, tweezers, dressing, swab, sponge or needle holders, retractors, dilators, clips, syringes of all kinds)."

The instant merchandise consists of two different materials *prima facie* classified in two different provisions: the needle of heading 9018, HTSUS, and the thread of heading 5609, HTSUS. Neither heading can be considered more specific as they both describe the good in part. The needle may constitute the item with the most value and greatest weight of the combined suture.

However, the role of the suture material in relation to the item as a whole outweighs the role of the needle. The *raison d'etre* of the merchandise is to keep a wound closed. The thread is the portion of the merchandise that holds the wound together; the needle is simply the vehicle for placing the thread where it needs to go. Furthermore, the trade recognizes that the role of the suture is paramount. For instance, completed sterilized suture and needle is listed in the 2001 Medical Device Register, Medical Economics, Inc., under "Sutures." The listings include "monofiliment suture with needle of same diameter as suture and non-absorbable, synthetic, polyamide suture in 8 sizes with full range of needle types." The listing for "Needles-Suture" describes only disposable and re-usable suture needles. Commercially, the completed and sterilized item is known as a suture. Some sutures are packaged attached to a needle and some are not. Each component of the instant merchandise appears to be equally "essential" under GRI 3(b). Hence, the merchandise is classifiable in heading 9018, HTSUS under GRI 3(c). Specifically, the entire suture and needle is classified as an "other" medical instrument in subheading 9018.90.80.

Holding:

Non-sterile suture material attached to a needle will be classified in subheading 9018.90.80, HTSUS, as "[I]nstruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: [O]ther instruments and appliances and parts and accessories thereof: [O]ther."

Effect on Other Rulings:

NY 869236 is revoked.

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

[ATTACHMENT H]

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

CLA–2 RR:CR:GC 965847 AM
Category: Classification
Tariff No. 9018.90.80

PORT DIRECTOR
U.S. CUSTOMS SERVICE
#1 La Puntilla
San Juan, PR 00901

Re: HQ 560914 modified; non-sterile suture attached to a suture needle.

DEAR PORT DIRECTOR:

This is in reference Headquarters ruling (HQ) 560914, dated October 22, 1998, responding to a request for Internal Advice (I.A. 32/97), on behalf of Davis & Gech, Inc. and U.S. Surgical Corporation, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of non-sterile suture attached to a suture needle. In HQ 560914, we determined that these goods were eligible for duty free treatment under U.S. Note 2(b), subchapter II, Chapter 98, HTSUS, provided all the components and materials thereof are of U.S. origin and the materials are exported directly from the U.S. to the B.C. and the assembled goods were imported directly to the U.S. from the B.C. This decision was based on classification in subheading 5609.00.40, HTSUS, which provides for "[a]rticles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included: [o]ther."

In reviewing like merchandise in another matter, we have determined that HQ 560914 must be modified to reflect the correct classification of the merchandise irrespective of the duty determination. In addition, New York Ruling (NY) H80134, dated April 26, 2001, NY 869236, dated December 17, 1991 and HQ 089373, dated October 25, 1991, are modified in HQs 965318, 965846 and 965845 of this date.

Facts:

As stated in HQ 560914, the subject merchandise consists of silk and man-made yarns and needles of U.S. or foreign origin. The different type of yarns used include: catgut; man-made absorbable gut; nylon dacron and silk. The yarns are cut to length and dressed in Puerto Rico and sent to the Domincan Republic for assembly with the needles (by threading) and retail packaging. The assembled sutures and needles are returned non-sterilized.

Issue:

Whether unsterile suture attached to a needle is classifiable as a medical instrument or according to the material of the suture?

Law and Analysis:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

GRI 2(b) requires that goods consisting of different materials be classified according to the principles of GRI 3. GRI 3(a) requires that amongst competing headings, the most specific heading be used, but headings which refer to part only of the goods are equally speci-

fic. GRI 3(b), provides that composite goods consisting of different materials or made up of different components, shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable. Explanatory Note 3(b)(VIII) to GRI 3(b) states that essential character may 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." GRI 3(c) requires that if the essential character can not be determined, the good is classified in the latter heading.

The following headings and subheadings are relevant to the classification of this product:

4206	Articles of gut (other than silkworm gut), of goldbeater's skin, of bladders or of tendons:
* * * * * * *	
5609	Articles of yarn, strip or the like of heading 5404 or 5405, twine, cordage, rope or cables, not elsewhere specified or included:
* * * * * * *	
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof:
9018.90	Other instruments and appliances and parts and accessories thereof:
9018.90.80	Other

EN 90.18(I)(A), lists needles under "[I]nstruments which may be used under the same names for several purposes (e.g., needles, lancets, trocars, surgical knives and scalpels of all kinds, sounds, specula, mirrors and reflectors, scissors, shears, forceps, pliers, chisels, gouges, mallets, hammers, saws, scrapers, spatulae, cannulae, catheters, suction tubes, etc., cauteries, tweezers, dressing, swab, sponge or needle holders, retractors, dilators, clips, syringes of all kinds)."

The instant merchandise consists of two different materials *prima facie* classified in two different provisions: the needle of heading 9018, HTSUS, and the thread of headings 4206 and 5609, HTSUS. Neither heading can be considered more specific as they both describe the good in part. The needle constitutes the item with the most value and weight.

However, the role of the suture material to the item as a whole outweighs the role of the needle. The *raison d'etre* of the merchandise is to keep a wound closed. The thread is the portion of the merchandise that holds the wound together; the needle is simply the vehicle for placing the thread where it needs to go. Furthermore, the trade recognizes that the role of the suture is paramount. For instance, completed sterilized suture and needle is listed in the 2001 Medical Device Register, Medical Economics, Inc., under "Sutures." The listings include "monofiliment suture with needle of same diameter as suture and non-absorbable, synthetic, polyamide suture in 8 sizes with full range of needle types." The listing for "Needles-Suture" describes only disposable and re-usable suture needles. Commercially, the completed and sterilized item is known as a suture. Some sutures are packaged attached to a needle and some are not. Each component of the instant merchandise appears to be equally "essential" under GRI 3(b). Hence, the merchandise is classifiable in heading 9018, HTSUS under GRI 3(c).

Holding:

Non-sterile suture material attached to a needle is classified in subheading 9018.90.80, HTSUS, as "[I]nstruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: [O]ther instruments and appliances and parts and accessories thereof: [O]ther." This is a duty free provision not subject to textile agreements. Further analysis of U.S. Note 2(b), subchapter II, Chapter 98, HTSUS is otherwise unchanged. Specifically, The imported sutures with needles are eligible for duty-free treatment under U.S. Note 2(b), subchapter II, Chapter 98, HTSUS, provided all the components and materials thereof are of U.S. origin and the materials were exported directly from the U.S. to the B.C. and the assembled goods were imported directly to the U.S. from the B.C.

Effect on Other Rulings:

HQ 560914 is modified in accordance with this ruling on the classification of non-sterile suture attached to a needle.

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

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF A CERTAIN WOMAN'S UPPER BODY GARMENT

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

ACTION: Notice of revocation of a tariff classification ruling letter and treatment relating to the classification of a certain woman's upper body garment.

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 one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a certain woman's upper body garment. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed actions was published August 14, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 33. 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 December 2, 2002.

FOR FURTHER INFORMATION CONTACT: Timothy Dodd, Textiles Branch: (202) 572–8819.

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. According-

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the August 14, 2002, CUSTOMS BULLETIN, Vol. 36, No. 33, proposing to revoke New York Ruling Letter (NY) E81679 (June 17, 1999), relating to the tariff classification of a certain woman's upper body garment, and to revoke any treatment accorded to substantially identical transactions. The period to submit comments expired on September 13, 2002. No comments were received.

In New York Ruling Letter (NY) E81679, dated June 17, 1999, the Customs Service classified a certain woman's upper body garment under subheading 6110.30.3055, HTSUSA, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of man-made fibers: Other: Other: Other, Other: Women's or girls'."

It is now Customs determination that the proper classification for the certain woman's upper body garment is subheading 6114.30.1020, HTSUSA, which provides for "Other garments, knitted or crocheted: Of man-made fibers: Tops: Women's or girls'." Headquarters Ruling Letter (HQ) 965600 revoking NY E81679 is set forth in the Attachment to this document.

Although in this notice Customs is specifically referring to one, this revocation covers 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.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY E81679, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 965600, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

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

Dated: September 17, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 17, 2002.

CLA–2 RR:CR:TE 965600 ttd
Category: Classification
Tariff No. 6114.30.1020

MR. DAVID J. EVAN
GRUNFELD, DESIDERIO, LEBOWITZ & SILVERMAN
245 Park Avenue, 33rd Floor
New York, NY 10167–3397

Re: Revocation of New York Ruling Letter E81679, dated June, 17, 1999; Classification of a Woman's Upper Body Garment.

DEAR MR. EVAN:

This letter concerns New York Ruling Letter (NY) E81679, dated June 17, 1999, issued to you on behalf of Mast Industries, Inc., regarding the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a woman's pullover. After review of that ruling, Customs has determined that the classification of the woman's knit upper body garment in subheading 6110.30.3055, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY E81679.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY E81679 was published on August 14, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 33. As explained in the notice, the period within which to submit comments on this proposal was until September 13, 2002. No comments were received in response to this notice.

Facts:

In NY E81679, Customs classified the merchandise at issue under subheading 6110.30.3055, HTSUSA, which provides for, among other things, women's man-made fiber pullovers. In that ruling, the subject article was described as follows:

> The submitted sample, style number F84245, is a woman's pullover that is constructed from 78% acrylic, 14% nylon, 8% spandex, knit fabric. The outer surface of the garment measures more than 9 stitches per 2 centimeters in the horizontal direction. The garment reaches the waist and has one long sleeve. There is shoulder coverage over one shoulder while the other shoulder is bare.

Issue:

What is the proper classification for the woman's knit upper body garment?

Law and Analysis:

Classification of goods under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation ("GRIs"). GRI 1

provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. 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 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.

Following GRI 1, there are two headings under consideration: heading 6110, HTSUSA, which provides for, *inter alia*, women's knitted sweaters, pullovers and similar articles and heading 6114, HTSUSA, which provides for, *inter alia*, other women's knitted garments.

Heading 6110, HTSUSA, covers "[s]weaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted." A recent informed compliance publication on apparel terminology describes sweaters as:

> knit garments that cover the body from the neck or shoulders to the waist or below (as far as the mid-thigh or slightly below the mid-thigh). Sweaters may have any type of pocket treatment or any type of collar treatment, including a hood, or no collar, or any type of neckline. They may be pullover style or have a full or partial front or back opening. They may be sleeveless or have sleeves of any length. Those sweaters provided for at the statistical level (9^{th} and 10^{th} digit of the tariff number) have a stitch count of 9 or fewer stitches per 2 centimeters measured on the outer surface of the fabric, in the direction in which the stitches are formed. Also included in these statistical provisions are garments, known as sweaters, where, due to their construction (e.g., open-work raschel knitting), the stitches on the outer surface cannot be counted in the direction in which the stitches are formed. Garments with a full-front opening but which lack the proper stitch count for classification as a sweater may be considered "sweater-like" cardigans of heading 6110.

See, U.S. Customs Service, *What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS,* 34 Cust. B. & Dec. 52, 153 (Dec 27, 2000).

Furthermore, reference to *The Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88 (*Guidelines*) is appropriate in this case. The *Guidelines* were developed and revised in accordance with the HTSUSA to ensure uniformity, to facilitate statistical classification, and to assist in the determination of the appropriate textile categories established for the administration of the Arrangement Regarding International Trade in Textiles. The *Guidelines* provide a similar description for sweaters. Notably, the *Guidelines* indicate that garments commercially known as sweaters or pullovers cover the upper body from the neck or shoulders to the waist or below. The EN to heading 6110, HTSUSA, also indicate that the heading covers garments designed to cover the upper parts of the body.

Customs has consistently found that in order for a garment to be classified in heading 6110, HTSUSA, the garment must, at a minimum, feature adequate "coverage" of the upper part of the body. *See* HQ 965231, dated November 19, 2001; HQ 963597, dated December 21, 1999; HQ 962161, dated December 29, 1998; and HQ 962123, dated December 29, 1998. In the rulings cited, Customs found that garments with an upper back that was cut straight across from side seam to side seam lacked adequate shoulder coverage and failed to meet the requisite coverage requirement for classification in heading 6110, HTSUSA. The styling of the subject garment: shoulder coverage over one shoulder while the other shoulder is bare, lacks adequate shoulder coverage to satisfy the requisite coverage requirement for classification in heading 6110, HTSUSA. *See* HQ 965231 (cited above), (wherein Customs found that a pullover garment with one shoulder styling and a diagonally cut neckline, similar to the subject garment, did not meet the requisite adequate coverage of the upper body to be classified in heading 6110).

Heading 6114, HTSUSA, provides for "[o]ther garments, knitted or crocheted." The EN to heading 6114 state that, "this heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of this Chapter." Accordingly, the subject garment, which because of distinct styling features is precluded from classification in headings 6106 and 6110, HTSUSA, is properly classified as an other garment of heading 6114. *See* HQ 963597 (cited above).

Subheading 6114.30.1020, HTSUSA, provides for "Other garments, knitted or crocheted: Of man-made fibers: Tops: Women's or girls." As the subject garment is made of

man-made materials and is intended for women or girls, the remaining inquiry is whether the subject garment satisfies the definition of a "top."

The apparel terminology compliance publication describes "tops" as:

> Upper body garments that are not included more specifically in headings 6101–6113. Tops generally have limited coverage of the neck and shoulder area, and/or do not reach the waist. Garments lacking coverage of the neck and shoulder area may have shoulder straps, a halter neckline, or no straps. The front and/or back of the garment may be cut straight across from side seam to side seam. Terms sometimes used to describe these garments are halter-tops, tube tops or camisoles. All of these garments are classified in the specific subheading for tops in 6114.

See, U.S. Customs Service, *What Every Member of the Trade Community Should Know About: Apparel Terminology Under the HTSUS,* 34 Cust. B. & Dec. 52, 153 (Dec 27, 2000).

The *Guidelines* provide a similar description of "tops." Notably, the *Guidelines* specify that tops include tube-type garments which may or may not be waist length, having a straight top (with or without attached shoulder straps), and off-the-shoulder tops, which do not have a "neck-area" as required by the "shirt and blouse" *Guidelines*.

In this case, applying the description from the apparel terminology informed compliance publication, the subject garment provides only limited coverage to the shoulder area. Moreover, it is clear from both sources that a "top" may reach the waist. As the subject garment satisfies the definition of a "top," it is properly classified under subheading 6114.30.1020, HTSUSA, as "Other garments, knitted or crocheted: Of man-made fibers: Tops: Women's or girls'."

Holding:

The women's knit top is classified in subheading 6114.30.1020, HTSUSA, which provides for "[o]ther garments, knitted or crocheted: Of man-made fibers: Tops: women's or girls'." The general column one duty rate is 28.6 percent *ad valorem* and the item falls within textile category designation 639.

NY E81679 is hereby REVOKED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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