

U.S. Customs Service

General Notices

FOREIGN CURRENCIES

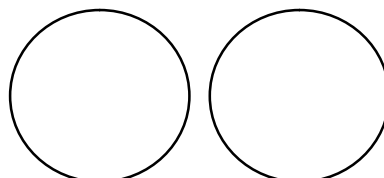
DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR JANUARY 2002

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): January 21, 2002.

Austria schilling:

January 1, 2002	\$0.064686
January 2, 2002 .....	.065631
January 3, 2002 .....	.065347
January 4, 2002 .....	.065013
January 5, 2002 .....	.065013
January 6, 2002 .....	.065013
January 7, 2002 .....	.064904
January 8, 2002 .....	.064861
January 9, 2002 .....	.064548
January 10, 2002 .....	.064861
January 11, 2002 .....	.064715
January 12, 2002 .....	.064715
January 13, 2002 .....	.064715
January 14, 2002 .....	.064933
January 15, 2002 .....	.064773
January 16, 2002 .....	.064199
January 17, 2002 .....	.063952
January 18, 2002 .....	.064272
January 19, 2002 .....	.064272
January 20, 2002 .....	.064272
January 21, 2002 .....	.064272
January 22, 2002064228
January 23, 2002064214
January 24, 2002063821
January 25, 2002062898
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January 27, 2002062898
January 28, 2002062535
January 29, 2002062811
January 30, 2002062847
January 31, 2002 .....	.062455



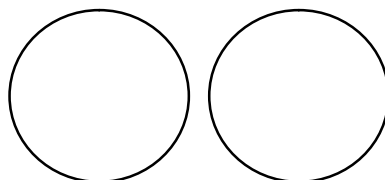
FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
January 2002 (continued):

Belgium franc:

January 1, 2002	\$.022065
January 2, 2002	.022387
January 3, 2002	.022291
January 4, 2002	.022177
January 5, 2002	.022177
January 6, 2002	.022177
January 7, 2002	.022139
January 8, 2002	.022124
January 9, 2002	.022018
January 10, 2002	.022124
January 11, 2002	.022075
January 12, 2002	.022075
January 13, 2002	.022075
January 14, 2002	.022149
January 15, 2002	.022095
January 16, 2002	.021899
January 17, 2002	.021815
January 18, 2002	.021924
January 19, 2002	.021924
January 20, 2002	.021924
January 21, 2002	.021924
January 22, 2002	.021909
January 23, 2002	.021904
January 24, 2002	.021770
January 25, 2002	.021455
January 26, 2002	.021455
January 27, 2002	.021455
January 28, 2002	.021331
January 29, 2002	.021425
January 30, 2002	.021438
January 31, 2002	.021304

Finland markka:

January 1, 2002	\$.149704
January 2, 2002	.151891
January 3, 2002	.151235
January 4, 2002	.150461
January 5, 2002	.150461
January 6, 2002	.150461
January 7, 2002	.150209
January 8, 2002	.150108
January 9, 2002	.149385
January 10, 2002	.150108
January 11, 2002	.149771
January 12, 2002	.149771
January 13, 2002	.149771
January 14, 2002	.150276
January 15, 2002	.149906
January 16, 2002	.148577
January 17, 2002	.148005
January 18, 2002	.148745
January 19, 2002	.148745
January 20, 2002	.148745
January 21, 2002	.148745
January 22, 2002	.148644



FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
January 2002 (continued):

Finland markka (continued):

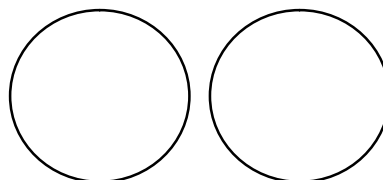
January 23, 2002	\$0.148611
January 24, 2002 .....	.147703
January 25, 2002 .....	.145567
January 26, 2002 .....	.145567
January 27, 2002 .....	.145567
January 28, 2002 .....	.144726
January 29, 2002 .....	.145365
January 30, 2002 .....	.145449
January 31, 2002 .....	.144541

France franc:

January 1, 2002	\$0.135695
January 2, 2002 .....	.137677
January 3, 2002 .....	.137082
January 4, 2002 .....	.136381
January 5, 2002 .....	.136381
January 6, 2002 .....	.136381
January 7, 2002 .....	.136152
January 8, 2002 .....	.136061
January 9, 2002 .....	.135405
January 10, 2002 .....	.136061
January 11, 2002 .....	.135756
January 12, 2002 .....	.135756
January 13, 2002 .....	.135756
January 14, 2002 .....	.136213
January 15, 2002 .....	.135878
January 16, 2002 .....	.134673
January 17, 2002 .....	.134155
January 18, 2002 .....	.134826
January 19, 2002 .....	.134826
January 20, 2002 .....	.134826
January 21, 2002 .....	.134826
January 22, 2002 .....	.134734
January 23, 2002 .....	.134704
January 24, 2002 .....	.133881
January 25, 2002 .....	.131945
January 26, 2002 .....	.131945
January 27, 2002 .....	.131945
January 28, 2002 .....	.131182
January 29, 2002 .....	.131762
January 30, 2002 .....	.131838
January 31, 2002 .....	.131015

Germany deutsche mark:

January 1, 2002	\$0.455101
January 2, 2002 .....	.461748
January 3, 2002 .....	.459754
January 4, 2002 .....	.457402
January 5, 2002 .....	.457402
January 6, 2002 .....	.457402
January 7, 2002 .....	.456635
January 8, 2002 .....	.456328
January 9, 2002 .....	.454129
January 10, 2002 .....	.456328
January 11, 2002 .....	.455305
January 12, 2002 .....	.455305



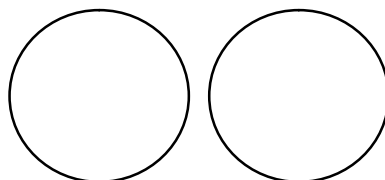
FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
January 2002 (continued):

Germany deutsche mark (continued):

January 13, 2002	\$0.455305
January 14, 2002 . . . . .	.456839
January 15, 2002 . . . . .	.455714
January 16, 2002 . . . . .	.451675
January 17, 2002 . . . . .	.449937
January 18, 2002 . . . . .	.452187
January 19, 2002 . . . . .	.452187
January 20, 2002 . . . . .	.452187
January 21, 2002 . . . . .	.452187
January 22, 2002 . . . . .	.451880
January 23, 2002 . . . . .	.451778
January 24, 2002 . . . . .	.449017
January 25, 2002 . . . . .	.442523
January 26, 2002 . . . . .	.442523
January 27, 2002 . . . . .	.442523
January 28, 2002 . . . . .	.439967
January 29, 2002 . . . . .	.441910
January 30, 2002 . . . . .	.442165
January 31, 2002 . . . . .	.439404

Greece drachma:

January 1, 2002	\$0.002612
January 2, 2002 . . . . .	.002650
January 3, 2002 . . . . .	.002639
January 4, 2002 . . . . .	.002625
January 5, 2002 . . . . .	.002625
January 6, 2002 . . . . .	.002625
January 7, 2002 . . . . .	.002621
January 8, 2002 . . . . .	.002619
January 9, 2002 . . . . .	.002607
January 10, 2002 . . . . .	.002619
January 11, 2002 . . . . .	.002613
January 12, 2002 . . . . .	.002613
January 13, 2002 . . . . .	.002613
January 14, 2002 . . . . .	.002622
January 15, 2002 . . . . .	.002616
January 16, 2002 . . . . .	.002593
January 17, 2002 . . . . .	.002583
January 18, 2002 . . . . .	.002595
January 19, 2002 . . . . .	.002595
January 20, 2002 . . . . .	.002595
January 21, 2002 . . . . .	.002595
January 22, 2002 . . . . .	.002594
January 23, 2002 . . . . .	.002593
January 24, 2002 . . . . .	.002577
January 25, 2002 . . . . .	.002540
January 26, 2002 . . . . .	.002540
January 27, 2002 . . . . .	.002540
January 28, 2002 . . . . .	.002525
January 29, 2002 . . . . .	.002536
January 30, 2002 . . . . .	.002538
January 31, 2002 . . . . .	.002522



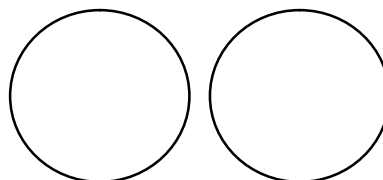
FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
January 2002 (continued):

Ireland pound:

January 1, 2002	\$1.130194
January 2, 2002	1.146700
January 3, 2002	1.141748
January 4, 2002	1.135908
January 5, 2002	1.135908
January 6, 2002	1.135908
January 7, 2002	1.134003
January 8, 2002	1.133241
January 9, 2002	1.127781
January 10, 2002	1.133241
January 11, 2002	1.130702
January 12, 2002	1.130702
January 13, 2002	1.130702
January 14, 2002	1.134511
January 15, 2002	1.131718
January 16, 2002	1.121687
January 17, 2002	1.117370
January 18, 2002	1.122956
January 19, 2002	1.122956
January 20, 2002	1.122956
January 21, 2002	1.122956
January 22, 2002	1.122195
January 23, 2002	1.121941
January 24, 2002	1.115084
January 25, 2002	1.098958
January 26, 2002	1.098958
January 27, 2002	1.098958
January 28, 2002	1.092610
January 29, 2002	1.097435
January 30, 2002	1.098069
January 31, 2002	1.091213

Italy lira:

January 1, 2002	\$0.000460
January 2, 2002 .....	.000466
January 3, 2002 .....	.000464
January 4, 2002 .....	.000462
January 5, 2002 .....	.000462
January 6, 2002 .....	.000462
January 7, 2002 .....	.000461
January 8, 2002 .....	.000461
January 9, 2002 .....	.000459
January 10, 2002 .....	.000461
January 11, 2002 .....	.000460
January 12, 2002 .....	.000460
January 13, 2002 .....	.000460
January 14, 2002 .....	.000461
January 15, 2002 .....	.000460
January 16, 2002 .....	.000456
January 17, 2002 .....	.000454
January 18, 2002 .....	.000457
January 19, 2002 .....	.000457
January 20, 2002 .....	.000457
January 21, 2002 .....	.000457
January 22, 2002 .....	.000456



FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
January 2002 (continued):

Italy lira (continued):

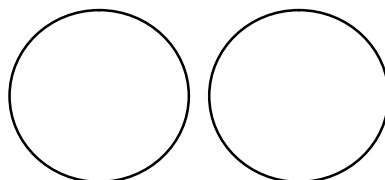
January 23, 2002	\$.000456
January 24, 2002	.000454
January 25, 2002	.000447
January 26, 2002	.000447
January 27, 2002	.000447
January 28, 2002	.000444
January 29, 2002	.000446
January 30, 2002	.000447
January 31, 2002	.000444

Luxembourg franc:

January 1, 2002	\$.022065
January 2, 2002	.022387
January 3, 2002	.022291
January 4, 2002	.022177
January 5, 2002	.022177
January 6, 2002	.022177
January 7, 2002	.022139
January 8, 2002	.022124
January 9, 2002	.022018
January 10, 2002	.022124
January 11, 2002	.022075
January 12, 2002	.022075
January 13, 2002	.022075
January 14, 2002	.022149
January 15, 2002	.022095
January 16, 2002	.021899
January 17, 2002	.021815
January 18, 2002	.021924
January 19, 2002	.021924
January 20, 2002	.021924
January 21, 2002	.021924
January 22, 2002	.021909
January 23, 2002	.021904
January 24, 2002	.021770
January 25, 2002	.021455
January 26, 2002	.021455
January 27, 2002	.021455
January 28, 2002	.021331
January 29, 2002	.021425
January 30, 2002	.021438
January 31, 2002	.021304

Netherlands guilder:

January 1, 2002	\$.403910
January 2, 2002	.409809
January 3, 2002	.408039
January 4, 2002	.405952
January 5, 2002	.405952
January 6, 2002	.405952
January 7, 2002	.405271
January 8, 2002	.404999
January 9, 2002	.403048
January 10, 2002	.404999
January 11, 2002	.404091
January 12, 2002	.404091



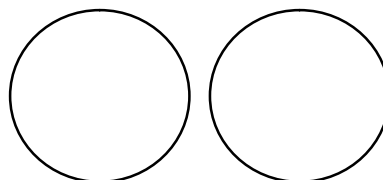
FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
January 2002 (continued):

Netherlands guilder (continued):

January 13, 2002	\$0.404091
January 14, 2002	.405453
January 15, 2002	.404454
January 16, 2002	.400869
January 17, 2002	.399327
January 18, 2002	.401323
January 19, 2002	.401323
January 20, 2002	.401323
January 21, 2002	.401323
January 22, 2002	.401051
January 23, 2002	.400960
January 24, 2002	.398510
January 25, 2002	.392747
January 26, 2002	.392747
January 27, 2002	.392747
January 28, 2002	.390478
January 29, 2002	.392202
January 30, 2002	.392429
January 31, 2002	.389979

Portugal escudo:

January 1, 2002	\$0.004440
January 2, 2002	.004505
January 3, 2002	.004485
January 4, 2002	.004462
January 5, 2002	.004462
January 6, 2002	.004462
January 7, 2002	.004455
January 8, 2002	.004452
January 9, 2002	.004430
January 10, 2002	.004452
January 11, 2002	.004442
January 12, 2002	.004442
January 13, 2002	.004442
January 14, 2002	.004457
January 15, 2002	.004446
January 16, 2002	.004406
January 17, 2002	.004389
January 18, 2002	.004411
January 19, 2002	.004411
January 20, 2002	.004411
January 21, 2002	.004411
January 22, 2002	.004408
January 23, 2002	.004407
January 24, 2002	.004380
January 25, 2002	.004317
January 26, 2002	.004317
January 27, 2002	.004317
January 28, 2002	.004292
January 29, 2002	.004311
January 30, 2002	.004314
January 31, 2002	.004287



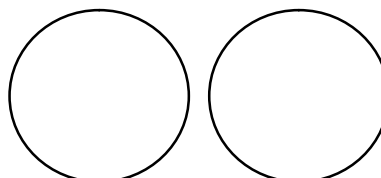
FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
January 2002 (continued):

South Korea won:

January 1, 2002	\$.000761
January 2, 2002	.000759
January 3, 2002	.000762
January 4, 2002	.000764
January 5, 2002	.000764
January 6, 2002	.000764
January 7, 2002	.000768
January 8, 2002	.000764
January 9, 2002	.000762
January 10, 2002	.000762
January 11, 2002	.000760
January 12, 2002	.000760
January 13, 2002	.000760
January 14, 2002	.000762
January 15, 2002	.000759
January 16, 2002	.000760
January 17, 2002	.000759
January 18, 2002	.000757
January 19, 2002	.000757
January 20, 2002	.000757
January 21, 2002	.000757
January 22, 2002	.000757
January 23, 2002	.000751
January 24, 2002	.000752
January 25, 2002	.000753
January 26, 2002	.000753
January 27, 2002	.000753
January 28, 2002	.000757
January 29, 2002	.000761
January 30, 2002	.000763
January 31, 2002	.000761

Spain peseta:

January 1, 2002	\$.005350
January 2, 2002	.005428
January 3, 2002	.005404
January 4, 2002	.005377
January 5, 2002	.005377
January 6, 2002	.005377
January 7, 2002	.005368
January 8, 2002	.005364
January 9, 2002	.005338
January 10, 2002	.005364
January 11, 2002	.005352
January 12, 2002	.005352
January 13, 2002	.005352
January 14, 2002	.005370
January 15, 2002	.005357
January 16, 2002	.005309
January 17, 2002	.005289
January 18, 2002	.005315
January 19, 2002	.005315
January 20, 2002	.005315
January 21, 2002	.005315
January 22, 2002	.005312



FOREIGN CURRENCIES—Daily rates for countries not on quarterly list for
January 2002 (continued):

Spain peseta (continued):

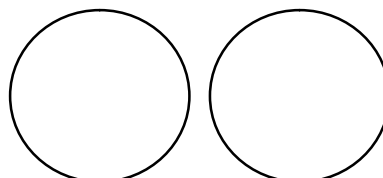
January 23, 2002	.....	\$0.005311
January 24, 2002	.....	.005278
January 25, 2002	.....	.005202
January 26, 2002	.....	.005202
January 27, 2002	.....	.005202
January 28, 2002	.....	.005172
January 29, 2002	.....	.005195
January 30, 2002	.....	.005198
January 31, 2002	.....	.005165

Taiwan N.T. dollar:

January 1, 2002	.....	\$0.028571
January 2, 2002	.....	.028539
January 3, 2002	.....	.028547
January 4, 2002	.....	.028571
January 5, 2002	.....	.028571
January 6, 2002	.....	.028571
January 7, 2002	.....	.028620
January 8, 2002	.....	.028539
January 9, 2002	.....	.028531
January 10, 2002	.....	.028547
January 11, 2002	.....	.028531
January 12, 2002	.....	.028531
January 13, 2002	.....	.028531
January 14, 2002	.....	.028547
January 15, 2002	.....	.028571
January 16, 2002	.....	.028571
January 17, 2002	.....	.028547
January 18, 2002	.....	.028547
January 19, 2002	.....	.028547
January 20, 2002	.....	.028547
January 21, 2002	.....	.028547
January 22, 2002	.....	.028506
January 23, 2002	.....	.028506
January 24, 2002	.....	.028506
January 25, 2002	.....	.028523
January 26, 2002	.....	.028523
January 27, 2002	.....	.028523
January 28, 2002	.....	.028555
January 29, 2002	.....	.028571
January 30, 2002	.....	.028580
January 31, 2002	.....	.028580

Dated: February 1, 2002.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.



FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR JANUARY 2002

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 02-04 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): January 21, 2002.

Brazil real:

January 28, 2002	\$0.411607
January 29, 2002411523
January 30, 2002409165

Denmark krone:

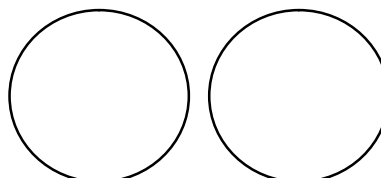
January 31, 2002	\$0.115647
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South Africa rand:

January 7, 2002	\$0.084962
January 8, 2002087108
January 9, 2002087336
January 10, 2002 .....	.086580
January 11, 2002 .....	.087566
January 12, 2002 .....	.087566
January 13, 2002 .....	.087566
January 14, 2002 .....	.086580
January 15, 2002 .....	.085324
January 16, 2002 .....	.085690
January 17, 2002 .....	.087374
January 18, 2002 .....	.086957
January 19, 2002 .....	.086957
January 20, 2002 .....	.086957
January 21, 2002 .....	.086957
January 22, 2002 .....	.085543
January 23, 2002 .....	.087796
January 24, 2002 .....	.088849
January 25, 2002 .....	.087719
January 26, 2002 .....	.087719
January 27, 2002 .....	.087719
January 28, 2002 .....	.086580
January 29, 2002 .....	.087642
January 30, 2002 .....	.087260
January 31, 2002 .....	.087566

Dated: February 1, 2002.

RICHARD B. LAMAN,
Chief,
Customs Information Exchange.



U.S. CUSTOMS SERVICE

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DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, February 6, 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.

DOUGLAS M. BROWNING,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF CAMOUFLAGE
PRINTED FLEECE GLOVES

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 camouflage printed fleece gloves.

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 related to the classification of camouflage printed fleece gloves under the Harmonized Tariff Schedule of the United States (HTSUS), 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 December 12, 2001, Volume 35, Number 50. Two comments were received in response to this notice.

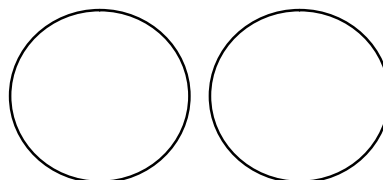
EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 22, 2002.

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.

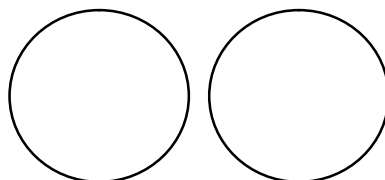


103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are “**informed compliance**” and “**shared responsibility**”. These concepts are premised on the idea 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 NY G86506, dated February 13, 2001, Customs classified camouflage printed fleece gloves (Style Numbers 131104, 132104, 133104 and 134104) as knit gloves of man-made fibers within subheading 6116.93.9400, HTSUS, textile category 631, which provides for “Gloves, mittens and mitts, knitted or crocheted: Other: Of synthetic fibers: Other: Other: With fourchettes.” Since the issuance of this ruling, Customs has reviewed the classification of the gloves and has determined that the cited ruling is in error. Accordingly, we are revoking NY G86506 to reflect proper classification of the goods as gloves specially designed for use in sports within subheading 6116.93.0800, HTSUS, pursuant to the analysis set forth in HQ 964901 (see “Attachment” to this document).

Pursuant to Customs obligations, a notice of proposed revocation of New York Ruling Letter (NY) G86506, dated February 13, 2001, was published in the CUSTOMS BULLETIN of December 12, 2001, Volume 35, Number 50. Two comments (which were timely received in response to this notice) were considered. One comment indicated that NY G86506 addressed the classification of four style numbers instead of one. We have reviewed NY G86506 ruling and have made the change in this notice. The second comment referred to NY G86506 and how the ruling’s classification of camouflage hunting gloves in subheading 6116.93.9400, HTSUS was an anomaly.

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 printed hunting gloves. Although in this notice Customs is specifically referring to New York Ruling Letter (NYRL) NY G86506, dated February 13, 2001. 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



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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: January 31, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, January 31, 2002.
CLA-2 RR:TC:TE 964901 TMF
Category: Classification
Tariff No. 6116.93.0800

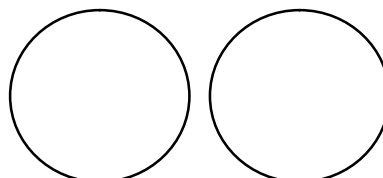
JOHN PELLEGRINI, ESQUIRE
ROSS & HARDIES
PARK AVENUE TOWER
65 East 55th Street
New York, NY 10022-3219

Re: Revocation of NY G86506; classification of camouflage printed fleece gloves; sports gloves; specially designed for use in hunting.

DEAR MR. PELLEGRINI:

This letter is in response to your letter dated March 6, 2001, in which you requested on behalf of your client, Paris Asia, Ltd., reconsideration of NY G86506, dated February 13, 2001, classifying four styles of camouflage printed fleece gloves in subheading 6116.93.9400, Harmonized Tariff Schedule of the United States (HTSUS). Your letter along with a sample was forwarded to this office for our reply. We have reviewed NY G86506 and have found the ruling to be in error. Therefore, this ruling revokes NY G86506.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C 1625(c)), notice of the proposed revocation of NY G86506 was published on December 12, 2001, in the CUS-



TOMS BULLETIN, Volume 35, Number 50. Two comments were received in response to the notice.

Facts:

The sample submitted, identified as Style Number 134104, is a half-fingered glove composed of polyester rayon fleece fabric that is printed in a green and brown camouflage style. It has an elasticized wrist and hemmed cuff. The palm side portion of the glove is composed of cellular polyvinyl chloride (PVC) plastic overlay material that extends across the palm portion and is sewn on top of the fleece fabric. The three additional styles classified in NY G86506 differ only in their camouflage patterns and are identified by style numbers 131104, 132104, 133104.

In NY G86506, Customs classified the articles as knit gloves of man-made fibers within subheading 6116.93.9400, HTSUS, which provides for "Gloves, mittens and mitts, knitted or crocheted: Other: Of synthetic fibers: Other: Other: With fourchettes."

You asserted that the articles are classifiable as sports gloves within subheading 6116.93.0800, HTSUS, as the gloves are specially designed for use in sports. You also submitted three advertisements of similarly constructed half-fingered fleece gloves. In each ad, the items are depicted as hunting gloves. Two of the ads indicate that the gloves are "perfect for gun or bow hunting" and that they will "protect your hands from biting cold." Also provided are copies of hangtags to indicate the particular camouflage pattern used. In addition, a copy of the retailer's "Ozark Trail" tag is shown.

Issue:

Whether the gloves are classified as "gloves * * * specially designed for use in sports" within subheading 6116.93.0800, HTSUS.

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). GRI 1, HTSUS, 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, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6, HTSUS, 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. We refer specifically to the Explanatory Notes, which govern heading 6116, HTSUS. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

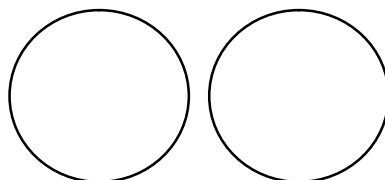
- 6116 Gloves, mittens and mitts, knitted or crocheted:
- 6116.93 Of synthetic fibers:
- 6116.93.0800 Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts, Other:
 - Other:
 - 6116.93.8800 Without fourchettes
 - 6116.93.9400 With fourchettes

GRI 3b

The subject articles are composed of PVC material and polyester rayon material. If the PVC material imparts the essential character to the gloves, classification under Chapter 39, HTSUS, would be appropriate. However, if the synthetic, woven textile material imparts the essential character of the gloves, classification under Chapter 62, HTSUS, would be appropriate.

Inasmuch as the instant gloves are composed of different materials, GRI 3 is applicable. Its relevant portions read as follows:

- (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, 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 those goods, even if one of them gives a more complete description of the goods.



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

The EN for GRI 3(b) reads, in pertinent part, as follows:

(VIII) The factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the goods.

In applying the criteria set forth in EN VIII to GRI 3(b), we find it is possible to make a definitive essential character determination in this instance.

In past rulings, Customs has often analyzed the role of the palm material in relation to the use of the glove in making an essential character determination. See Headquarters Ruling Letters (HQ) 951752 (9/2/92); HQ 085561 (12/6/89); HQ 083656 (6/6/89); and HQ 956463 (9/8/94). In those rulings, the various palm materials imparted the essential character to the gloves because the materials were clearly designed to enhance the wearer's "grip" while he or she participated in such activities as snow skiing, jet skiing, golfing and biking. Some of the palms had specialized features such as padding and a nub-like texture in order to enhance grip.

However, unlike the glove rulings above, the instant gloves differ as the PVC material does not extend from the fingertips to the wrist. Rather, the PVC material is limited to the palm. Also, since the PVC material covers less than 30% of the surface area, we do not believe that it contributes to the overall appeal of the gloves and is not dispositive of the gloves' use. Therefore, we find that the polyester rayon fleece material imparts the essential character to the gloves.

Design and use in a sport

In order for the gloves at issue to be classified within subheading 6116.93.0800, HTSUS, we must consider the following: (1) whether hunting is a sport, and (2) whether the gloves at issue are specially designed for use in hunting. See HQ 951219, dated June 26, 1992 (classifying a leather motorcycle-racing glove as a glove for use in sports within subheading 4203.21.8060, HTSUS).

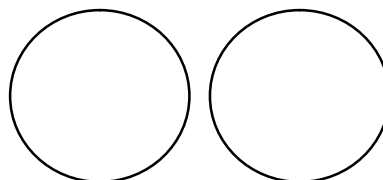
The term "sport" is defined by *The Random House Dictionary of the English Language*, the Unabridged Edition (1983) as: "1. an athletic activity requiring skill or physical prowess and often of a competitive nature, as racing, baseball, tennis, golf, bowling, wrestling, boxing, hunting, fishing, etc. 2. a particular form of this, esp. in the out of doors." Hunting clearly meets the definition of a sport. Further, Customs has taken the position that hunting and shooting activities are sports for tariff purposes. See HQ 088981, dated July 18, 1991 (referring to HQ 083694, dated May 16, 1989, and HQ 066484, dated January 7, 1981.)

As subheading 6116.93.0800 is a use provision, we consider the glove as a whole in order to determine its use as a hunting glove. In determining whether the subject gloves are specifically designed for use in hunting, we consider HQ 089769, dated October 8, 1991. In that ruling, Customs recognized the following glove design characteristics as indicative of "some intent to design gloves as hunting gloves." The cited features include:

- a non-skid reinforcement, which includes the two shooting fingers;
- a camouflage outer shell or outer shell with enhanced visibility;
- insulation that enhances warmth without creating excess bulk; and
- a hook and clasp closure.

As the instant glove meets three of the four criteria set forth above, we find evidence that the intent to design the article as hunting gloves is present. First, the palm area of Style 134104 is covered with a textured surface to impart a non-skid reinforcement. Second, the gloves are designed with hunting in mind. The brown and green camouflage gloves allow the wearer to conceal his/her hands when necessary. Third, the glove is made of a material that provides warmth without creating unwanted bulk.

Not only does Style 134104 possess three of the four features, thereby creating a presumption that the gloves are specifically designed as hunting gloves, its half-fingered design provides better grip and access to a firearm or bow during hunting. See HQ 957042, dated January 18, 1995 (noting that a brown and black camouflage glove met four criteria of HQ 089769, but also had additional features such as a finger-tip access to the trigger and



“action back” pleat design which are indicative of a design for use as a hunting glove with-
in subheading 6216.00.4600, HTSUS.)

Based on the foregoing evidence, we find that the gloves have been specially designed for
sports use, including, but not limited to hunting, and therefore warrant classification under
subheading 6116.93.0800, HTSUS, which provides for, *inter alia*, gloves specially de-
signed for use in sports.

Holding:

Style Numbers 131104, 132104, 133104 and 134104 are classified as gloves especially
designed for use in sports within subheading 6116.93.0800, HTSUS. The general column
one duty rate is 3.3 percent *ad valorem*.

NY G86506, dated February 13, 2001, is hereby revoked. In accordance with 19 U.S.C.
1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BUL-
LETIN.

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

PROPOSED REVOCATION OF RULING LETTERS AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF INSULATED SHOPPING BAGS

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

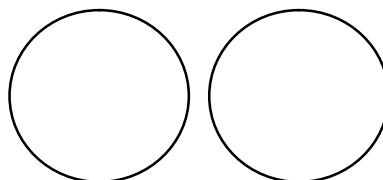
ACTION: Notice of proposed revocation of tariff classification ruling
letters and revocation of treatment relating to the classification of insu-
lated shopping bags.

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 Moderniza-
tion) of the North American Free Trade Agreement Implementation
Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested par-
ties that Customs intends to revoke two ruling letters relating to the tar-
iff classification, under the Harmonized Tariff Schedule of the United
States Annotated (HTSUSA), of insulated shopping bags. Similarly,
Customs proposes to revoke any treatment previously accorded by it to
substantially identical merchandise that is contrary to the position set
forth in this notice. Comments are invited on the correctness of the in-
tended actions.

DATE: Comments must be received on or before March 22, 2002.

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

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles
Branch: (202) 927-2379.



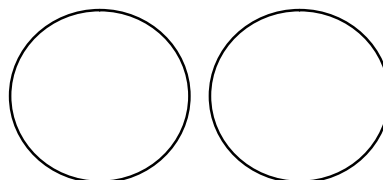
SUPPLEMENTARY INFORMATION:

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 two rulings relating to the tariff classification of insulated shopping bags. Although in this notice Customs is specifically referring to the revocation of New York Ruling Letter (NY) G87998, dated March 15, 2001 (attachment A), and NY G89102, dated April 20, 2001 (Attachment B); this notice covers any rulings on this merchandise 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 data bases 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 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 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 their agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY G87998 and NY G89102, Customs classified three insulated shopping bags in subheading 4202.92.4500, HTSUSA, which provides in pertinent part for travel, sports and similar bags with an outer surface of sheeting of plastic. The insulated shopping bags are constructed of two layers of unbacked, unsupported and unreinforced sheetings of plastics sandwiching a thin layer of cellular plastics.

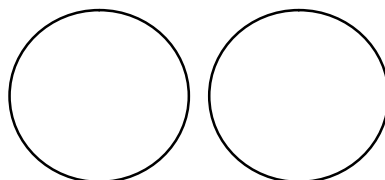
The largest bag has side panels that measure approximately 18 inches wide by 19 inches tall. The end panels are gusseted, tapering from approximately 7 inches at the top to 8 inches wide at the bottom, and are 18 inches tall. The bottom of the bag is 8 inches wide and 18 inches long and has an insert for the bottom. The request for reconsideration states that the bag has a nominal interior volume of 12 gallons or 45 liters and is capable of holding up to forty-five pounds of food. The bag is FDA approved for food contact. The middle-sized bag is nearly identical except smaller. It has an interior volume of 9 gallons or 34 liters and is designed to hold 35 pounds. The smallest, is a flat bag with a volume of five gallons and a load carrying rating of 25 pounds. This bag does not have side gussets or an insert for the bottom. It has a straight bottom and molded snap handles that are heat sealed to the bag. Based on our analysis of the scope of the terms of subheadings 4202.92.45, HTSUSA, and 3923.21.00 HTSUSA, the Legal Notes, and the Explanatory Notes, the insulated shopping bags of the type discussed herein, are classifiable under subheading 3923.21.00, HTSUSA, which provides for: Articles for the conveyance or for packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Sacks and bags (including cones): Of polymers of ethylene, Reclosable, with integral extruded closure.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY G87998 and NY G89102, and any other ruling not specifically identified, that is contrary to the position 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) 965039 (attachment C). 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 position set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

Dated: February 1, 2002.

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

[Attachments]



U.S. CUSTOMS SERVICE

25

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, March 15, 2001.
CLA-2-42:RR:NC:N3:341 G87998
Category: Classification
Tariff No. 4202.92.4500

MR. WICK CAMPBELL
ETB CORPORATION
*20 Southwoods Parkway, Suite 500
Atlanta, GA 30354*

Re: The tariff classification of a shopping bag from France.

DEAR MR. CAMPBELL:

In your letter dated February 26th, 2001, you requested a ruling on behalf of Keepcool USA Co. on tariff classification.

The sample submitted with your request is a shopping bag that is designed to transport frozen or hot foods from the point of purchase to one's home. The bag is a shopping bag manufactured for prolonged use and is insulated on the interior. The exterior surface is made of sheeting of polyethylene. The top opening is secured by a full-width plastic grip, to which a carry handle is also permanently attached.

The applicable subheading for this product will be 4202.92.4500, Harmonized Tariff Schedule of the United States (HTS), which provides for travel, sports, and similar bags, other. The general rate of duty will be 20 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 Kevin Gorman at 212-637-7091.

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

[ATTACHMENT B]

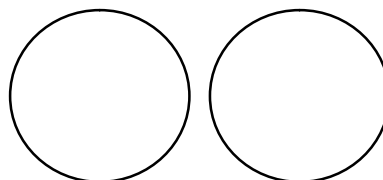
DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, April 20, 2001.
CLA-2:RR:NC:TA:341 G89102

MR. JOHN S. RODE
RODE & QUALEY
*295 Madison Ave
New York, NY 10017*

DEAR MR. RODE:

With regard to your letter dated April 5, 2001 requesting a tariff classification ruling on "Freezer Carrier Bags" products of France and imported by KeepCool USA.

You have submitted three samples identified as styles #45vfbi (UPC #00007 41053), # 34vfbi (UPC #19647 00007) and #18vsb (UPC 19647 00002). Each style is an insulated shopping bag of the kind sold at retail as rack goods and also given to retail consumers as a premium gift upon purchase of goods. They are each part of "KeepCool" product line. Each style is manufactured of a three-layer construction consisting of an outer layer, a middle layer and an inner layer of plastics. The outer layer consists of a 3-film construction of a metalized film. The middle is a foamed plastics and the inner is a film of plastics. All seams are heat-sealed. Styles 45vfbi and 34vfbi have a patented handle design of molded



plastics, are flat bottomed and have a rigid paperboard bottom. Style 18vsb is a strait bottom and has molded plastic double handles. Each handle design serves to secure the top of the bag. Style 45vfbi measures approximately 18" x 18" x 7" and is designed to contain 12 gallons or 45 pounds. Style 34ufbi measures approximately 19" x 13" x 7" and is designed to contain approximately 9 gallons or 35 pounds. Style 18vsb measures approximately 20" x 17" and is designed to contain approximately 5 gallons or 18 liters. Each shopping bag is printed with literature stating that each are "reusable" and a "Freezer Carrier". Style #45ufbi bears print which reads, "Great for picnics, trips to the beach or the ballpark."

This office has previously ruled upon the same product as now presented. A copy of prior ruling NY G87998 dated March 15, 2001 is now attached. A Customs Broker on behalf of KEEPCOOL USA, INC requested the ruling. The original ruling request, of February 26, 2001, included the same product specifications and literature as seen at the importer's Internet WEB site, WWW.keepcoolusa.com. In light of the fact that the shopping bags have been previously found to be designed for prolonged use, the prior ruling shall apply to the instant articles now presented.

If you have any questions regarding the above, contact National Import Specialist Kevin Gorman at 212-637-7091

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

[ATTACHMENT C]

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

CLA-2 RR:CR:TE 965039 JFS
Category: Classification
Tariff No. 3923.21.00, HTSUSA

JOHN S. RODE, ESQ.
RODE & QUALEY
295 Madison Avenue
New York, NY 10017

Re: Revocation of NY G87998 and NY G89102; Insulated Shopping Bags; Prolonged Use; Not Heading 4202.

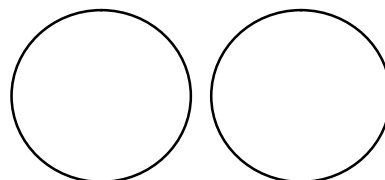
DEAR MR. RODE:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) G87998 dated March 15, 2001, and NY G89102 dated April 20, 2001, issued to you on behalf of your client, KeepCool USA Company ("KeepCool"), concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of insulated shopping bags. After review of the two rulings, it has been determined that the classification of the insulated shopping bags in subheading 4202.92.4500, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY G87998 and NY G89102.

Facts:

The articles considered in NY G87998 and NY G89102 are insulated shopping bags. Three samples of the bags were submitted with the request for reconsideration. The bags are constructed of two layers of unbacked, unsupported and unreinforced sheetings of plastics sandwiching a thin layer of cellular plastics.

KeepCool Model #45vfbi, has side panels which measure approximately 18 inches wide by 19 inches tall. The end panels are gusseted, taper from approximately 7 inches at the top to 8 inches wide at the bottom, and are 18 inches tall. The bottom of the bag has an insert and is 8 inches wide and 18 inches long. The request for reconsideration states that the bag has a nominal interior volume of 12 gallons or 45 liters and is capable of holding up to forty-five pounds of food. The bag is FDA approved for food contact. On the exterior of



the bag is the "Sam's Club" logo. The printing on the exterior of the bag states that the bag (1) is reusable; (2) is triple-insulated to keep frozen food purchases frozen for over 2.5 hours; (3) can be used to protect groceries and keep drinks cold; (4) will keep your food frozen all the way home; and (5) is great for picnics, trips to the beach or to the ball game.

KeepCool Model #34vfbi is nearly identical in design to Model #45vfbi except it is smaller, having an interior volume of 9 gallons or 34 liters and being designed to hold 35 pounds. The bag has various logos from food manufacturers such as "Stouffer's®," "Tyson®," and "Cool Whip®." lettering on the exterior of the bag states that the bag will keep frozen food frozen for over two hours and that the bag is reusable.

KeepCool Model #18vsb is a flat bag with a volume of five gallons and a load carrying rating of 25 pounds. This bag does not have side gussets or an insert for the bottom. It has a straight bottom and molded snap handles that are heat sealed to the bag. The lettering on the exterior of the bag states that it will keep products frozen for two hours in standard conditions of use. It further states that it can be used for groceries such as meat, fish, veggies and even drinks. It promotes using the bag for picnics, the beach or the ball game.

The request for reconsideration states that:

All three of the bags are constructed from three layers of plastic sheeting, plus molded plastic handles. The inner layer is made from 2.56 mil polyethylene sheeting, the middle layer is an insulating layer of 0.8 mm closed-cell polyethylene foam, and the outer layer consists of metalized 0.47 mil polyester film glued to a 1.77 mil thick polyethylene film.

The Customs Laboratory reached similar results. It determined that the inner layer is constructed of 2.559 mil of polyethylene. The middle layer is constructed of 17.126 mil of foam polyethylene. The outer layer is constructed of 2.087 mil of metalized polyethylene and .256 mil of polyester.¹

Issue:

Whether the insulated shopping bags are not designed for prolonged use and are therefore excluded from classification in heading 4202, HTSUSA.

Analysis:

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

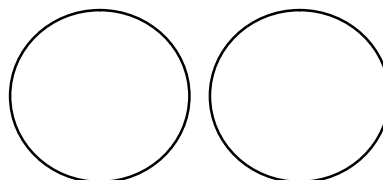
The Harmonized Commodity Description and Coding System, Explanatory Notes (EN), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN, although not dispositive or legally binding, 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, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 4202, HTSUSA, provides for, among other articles, shopping bags wholly or mainly covered with plastic sheeting.² Subheading 4202.92.45, HTSUSA, provides for travel, sports and similar bags, with an outer surface of plastic sheeting or textile materials. Additional U.S. Note 1 to Chapter 42, states that "the expression "travel, sports and similar bags" means goods * * * of a kind designed for carrying clothing and other personal effects during travel, including * * * shopping bags. * * *" Chapter Note 2(A)(a) to Chapter 42, HTSUSA, states that heading 4202, HTSUSA, does not cover "Bags made of sheeting of plastics, whether or not printed, with handles, not designed for prolonged use (heading 3923)."

The EN to heading 4202, HTSUSA, as amended in 2002, provides guidance as to what type of bags are covered by the exclusion above. At its 26th session in November 2000, the

¹ A "mil" is equal to one one thousandth of an inch.

² The 2002 tariff includes new subheadings 4202.92.05 and 4202.92.10, which provide for insulated food and beverage bags. However, by operation of Additional U.S. Note 1, the instant bags would not be covered within these subheadings because shopping bags are considered travel bags and those with an outer surface of sheeting of plastic are classified under subheading 4202.92.45, HTSUSA.



Customs Cooperation Counsel's Harmonized System Committee (HSC), approved the following new text for the EN to heading 4202.:

This heading does not cover:

- (a) Shopping bags, including bags consisting of two outer layers of plastics sandwiching an inner layer of cellular plastics, not designed for prolonged use, as described in Note 2(A)(a) to this Chapter (heading 39.23).

Under the decision of the HSC, insulated shopping bags almost identical to the ones under consideration, assuming they are not designed for prolonged use, are excluded from classification in heading 4202, HTSUSA.

As stated previously, the EN's are relevant as guidelines in determining the scope of a heading. Both Congress and Customs have endorsed use of the EN's in the classification of merchandise. In T.D. 89-80, Customs set forth that EN's, along with decisions of the HSC that are published in the Compendium of Classification Opinions, are to be accorded appropriate weight in making classification determinations and that they (EN's) should always be consulted. Further, both Congress, in the report of the Joint Committee on the Omnibus Trade and Competitiveness Act of 1988, and Customs, in the T.D., have acknowledged that the EN's will be modified from time to time. That being the case, it is clear that Congress anticipated that EN's would be amended periodically, and that Customs, in such instances, would appropriately consider EN's in their amended form.

The EN clearly describes the bags under consideration, that is, if they are "not designed for prolonged use." Thus, although the bags appear to be excluded by Chapter Note 2(A)(a), it is necessary to determine if the bags are designed for prolonged use.

In Headquarters Ruling Letter (HQ) 088254, dated March 27, 1991, Customs classified a similar insulated shopping bag, described as "Sac Isotherme", under subheading 4202.92.4500, HTSUSA. The "Sac Isotherme" consisted of an outer surface of metalized polyester plastic sheeting material, a thin foam interlining, and a polyvinyl inner lining. It measured approximately 20 inches by 13 inches by 6 inches, had a sturdy plastic handle, and was similar to a standard rectangular shopping bag. The "Sac Isotherme" was designed to transport fresh or frozen food from the place of purchase to the home. Customs ruled that the "Sac Isotherme" was of durable construction, designed for prolonged use, and therefore not precluded from classification in heading 4202, HTSUSA, by virtue of Chapter Note 2(A)(a) to Chapter 42, HTSUSA.

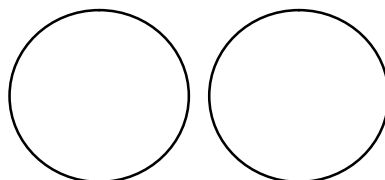
In HQ 953077, dated April 26, 1993, Customs classified another shopping bag under heading 3923, HTSUSA. That bag was made of plastic sheeting coated on the inside with vaporized aluminum and on the exterior with a thin polyethylene coating. The bag contained no insulation, but had some temperature retaining capability due to the reflectivity of the metallization. The bag was designed for transporting food from the place of purchase to the home and was given to purchasers at retail to carry purchases home and to be subsequently reused by the purchaser. However, tests concerning durability indicated that continued usage of the bag was unlikely and that the bag might only last through several uses. Accordingly, Customs ruled that the bag was flimsily constructed, not manufactured for continued durable use and that such bags were classifiable in heading 3923, HTSUSA.

In HQ 962033, dated November 29, 1999, Customs classified a shopping bag identified as "Bolsa Isotermica" which was constructed of three layers of plastics. The inner layer was a sheeting of polyethylene. The middle layer was an insulating layer of foamed polyethylene. The outer layer was a double layer consisting of metalized polyester and polyethylene. The description included with the ruling request stated that the thermal properties of the bag are guaranteed for between 50 and 100 uses. In considering this bag, Customs reviewed its prior decisions on insulated shopping bags and concluded that:

it appears that Customs has classified insulated shopping bags in heading 3923, HTSUSA, when made of flimsy materials such as polyethylene, not capable of prolonged use, containing no middle insulating material, and designed to be given away to the consumer. In contrast, insulated shopping bags of more durable construction, containing a middle insulating layer, and of a type sold empty at retail, are classified in heading 4202, HTSUSA.

In classifying the bag in heading 4202, HTSUSA, Customs relied upon the fact that the bag was of durable construction, was not given away as a premium but purchased empty by consumers, and was intended for repeated use, between 50 to 100 uses or for 1½ to 2 years.

The construction of the instant bags is not as substantial as the bag described in HQ 962033. It is given away as a promotional item as evidenced by the brand specific adverti-



sing. However it is also sold empty at retail as evidenced by the claims that it will keep food frozen for two hours and is great for picnics and a ball game. Although reusable, it is not designed to be used 50 to 100 times, or to last for 1½ to 2 years. While the bags do have an insulating layer, the layer is merely sandwiched between the inner and outer layers of plastics. It is not incorporated into the construction of the bag in a manner that provides durability to the bag. The insulating layer merely operates to improve the insulating function of the bag. It does not extend the life of the bag.

The bags under consideration are certainly reuseable, but to a very limited extent. Because they also are of a kind that is explicitly described in the EN to heading 4202, HTSUSA, as being excluded from the heading, they must be considered to be "not designed for prolonged use." The bags are classified in subheading 3923.21.00, HTSUSA, as: "Articles for the conveyance or for packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Sacks and bags (including cones): Of polymers of ethylene, Reclosable, with integral extruded closure."

Holding:

NY G87998 and NY G89102 are hereby revoked. The Keep Cool bags, styles 45vfbi, 34vfbi, and 18vsb, are classified under subheading 3923.21.00, HTSUSA, which provides for: "Articles for the conveyance or for packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: Sacks and bags (including cones): Of polymers of ethylene, Reclosable, with integral extruded closure." The general column one rate of duty is 3% *ad valorem*.

JOHN DURANT,
 Director,
 Commercial Rulings Division.

PROPOSED MODIFICATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF BUMPER PARTS

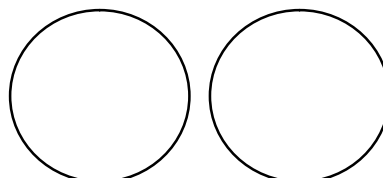
AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the tariff classification of bumper parts.

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 the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of bumper parts and to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before March 22, 2002.

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



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

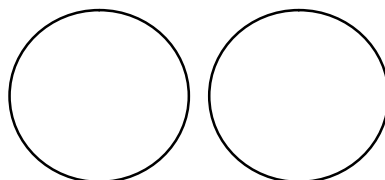
SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for 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 modify a ruling letter pertaining to the tariff classification of bumper parts. Although in this notice Customs is specifically referring to one ruling, NY B89510, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

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



U.S. CUSTOMS SERVICE

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porter's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY B89510, dated October 9, 1997, set forth as "Attachment A" to this document, in addition to other articles not herein relevant, Customs found that the Support Assembly (Part #894170-4181) was classified in subheading 8708.10.30, HTSUS, as parts and accessories of the motor vehicles of headings 8701 to 8705: bumpers and parts thereof: bumpers. Customs has reviewed the matter and determined that the correct classification of the Support Assembly is in subheading 8708.10.60, HTSUS, as Parts and accessories of the motor vehicles of headings 8701 to 8705: Bumpers and parts thereof: Parts of bumpers.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY B89510 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) 964662 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: January 29, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, October 9, 1997.
CLA-2-87:RR:NC:MM:101 B89510
Category: Classification
Tariff No. 8708.29.5060, 8708.99.8080,
8421.31.0000, 8421.99.0080, and 8708.10.3050

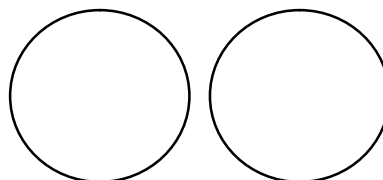
MR. EDWARD WOEHR
SUBARU-ISUZU AUTOMOTIVE, INC.
*5500 State Road 38 East
Lafayette, IN 47903*

Re: The tariff classification of automotive parts from Japan.

DEAR MR. WOEHR:

In your letter dated September 8, 1997, you requested a tariff classification ruling.

The first item concerned (shown below), the Stabilizer Assembly, is a claw-shaped piece of steel measuring 1½" L X 2" W. It has a piece of white, hard plastic with a piece of black, soft textile glued to the back of it's claws.





The function of this item is to act as a support for a vehicle window as it is raised and lowered; the item, itself, is attached to a vehicle's inner door panel.

The applicable subheading for the Stabilizer Assembly (Part #61270C) will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of *** motor vehicles ***: Other parts and accessories of bodies: Other: Other: Other. The rate of duty will be 2.7% ad valorem.

The second item (shown below), the Webbing Guide, is a formed piece of black steel measuring 3-1/4" L X 1-5/8" W. It has a white, plastic coating over the bend of its bottom portion.



The function of this item is to act as a guide to a vehicle's seatbelt shoulder strap. It attaches to the center pillar on each side of a vehicle's interior.

The applicable subheading for the Webbing Guide (Part #s 64765H & 64765I) will be 8708.29.5060, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of *** motor vehicles ***: Other parts and accessories of bodies: Other: Other: Other. The rate of duty will be 2.7% ad valorem.

The third item (diagram shown below), the Battery Bottom Sheet, is a rectangular piece of hard plastic with a full upright rim.



The function of this item is to insulate a vehicle's battery from the metal battery tray; it fits over the metal battery tray and the vehicle battery sits in it.

The applicable subheading for the Battery Bottom Sheet (Part #894405-0300) will be 8708.99.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of *** motor vehicles ***: Other parts and accessories: Other: Other: Other: Other: Other. The rate of duty will be 2.7% ad valorem.

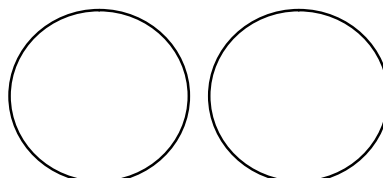
The fourth item (diagram shown below), the Battery Clamp, is an hourglass-shaped piece of steel with another piece of steel, bent at a 45° degree angle, attached perpendicularly near one end.



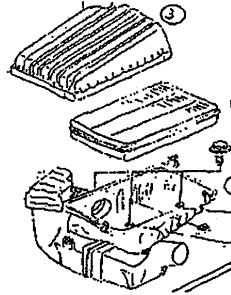
The function of this item is to secure a vehicle battery so that it stays within the battery tray; the item clamps on top of the vehicle battery and is tightened by a bolt and tension rod.

The applicable subheading for the Battery Clamp (Part #897163-1030) will be 8708.99.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of *** motor vehicles ***: Other parts and accessories: Other: Other: Other: Other: Other. The rate of duty will be 2.7% ad valorem.

The fifth item (diagram shown below) is the Air Cleaner Assembly; it is a plastic case, comprised of top and bottom (or Cap and Case) which houses an Air Filter Element and is



located within a vehicle engine. In your letter, you indicate that the Air Cleaner Assembly will be imported either with or without the Air Filter Element.

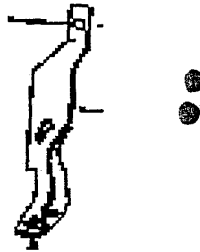


The function of this item is to clean the air within a vehicle engine.

The applicable subheading for the Air Cleaner Assembly (Part #s 897064-5570, 897138-9620, 897111-4230) imported with the Air Cleaner Element will be 8421.31.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Filtering or purifying machinery and apparatus for gases: Intake air filters for internal combustion engines. The rate of duty will be 2.7% ad valorem.

The applicable subheading for the Air Cleaner Assembly (Parts #s 897064-5570, 897138-9620, 897111-4230) imported without the air filter element will be 8421.99.0080, Harmonized Tariff Schedule of the United States (HTS), which provides for Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof: Parts: Other * * * Other. The rate of duty will be 1.6% ad valorem.

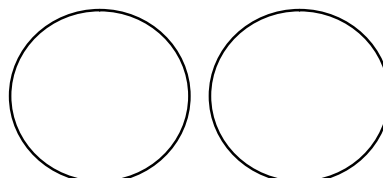
The sixth item (diagram shown below) is the Support Assembly; it is a piece of steel which is attached to the rear and rear bumper of a vehicle.



The function of this item is to stabilize a vehicle's rear bumper.

The applicable subheading for the Support Assembly (Part #894170-4181) will be 8708.10.3050, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of * * * motor vehicles * * *: Bumpers and parts thereof: Bumpers: Other. The rate of duty will be 2.7% ad valorem.

The last item (shown below) is the Stay Assembly; it is a curved piece of gold-colored steel with a hole at one end and a dark brown, hard plastic clip snapped on to the other end. The item measures 1 1/4" L X 1 1/4" W.



The function of this item is to support a vehicle ignition's wiring at various points between the spark plugs and distributor cap. This item is bolted to the vehicle engine at several places.

The applicable subheading for the Stay Assembly will be 8708.99.8080, Harmonized Tariff Schedule of the United States (HTS), which provides for Parts and accessories of * * * motor vehicles * * *: Other parts and accessories: Other: Other: Other: Other: Other. The rate of duty will be 2.7% ad valorem.

You state that all of the items will be used in or on the Isuzu Rodeo Sports Utility Vehicle or the Subaru Legacy automobile. You further state that the exporters for these items will be Isuzu Motors Japan and Fuji Heavy Industries [Subaru] and that they will be entered into the U.S. through the Port of Indianapolis, Indiana.

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 Robert DeSoucey at 212-466-5667.

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 964662 KBR
Category: Classification
Tariff No. 8708.10.60

MR. EDWARD WOEHR
SUBARU-ISUZU AUTOMOTIVE, INC.
5500 State Road 38 East
Lafayette, IN 47903

Re: Reconsideration of NY B89510; Bumper parts.

DEAR MR. WOEHR:

This is in reconsideration of New York Ruling Letter (NY) B89510, issued to you by the Customs National Commodity Specialist Division, dated October 9, 1997, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of automotive parts from Japan. This ruling will concern only the sixth item in that ruling, the Support Assembly (Part #894170-4181).

Facts:

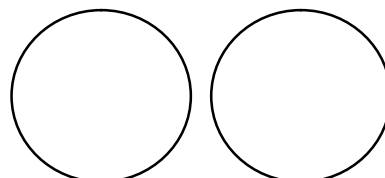
The sixth item considered in NY B89510 was Support Assembly (Part #894170-4181). This is a piece of steel which is attached to the rear of a vehicle and the rear bumper of a vehicle. The purpose of this part is to stabilize a vehicle's rear bumper. The ruling classified the part in subheading 8708.10.30, HTSUS, which provides for Parts and accessories of the motor vehicles of headings 8701 to 8705: Bumpers and parts thereof: Bumpers.

Issue:

What is the correct classification of the support assembly?

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 Sec-



tion or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The HTSUS heading under consideration is as follows:

8708	Parts and accessories of the motor vehicles of headings 8701 to 8705:
8708.10	Bumpers and parts thereof:
8708.10.30	Bumpers
8708.10.60	Parts of bumpers

In NY B89510, the support assembly part was classified as if it was the bumper of a vehicle rather than as a part for attaching and stabilizing the bumper to the vehicle. Customs has determined that this is incorrect. The support assembly is only a part of the bumper. Therefore, Customs finds that the correct classification for the support assembly (Part #894170-4181) is in subheading 8708.10.60, HTSUS, as parts and accessories of the motor vehicles of headings 8701 to 8705: bumpers and parts thereof: parts of bumpers.

Holding:

In accordance with the above discussion, the support assembly (Part #8894170-4181) are classified in subheading 8708.10.60, HTSUS as parts and accessories of the motor vehicles of headings 8701 to 8705: bumpers and parts thereof: parts of bumpers.

NY B89510 dated October 9, 1997, is **modified** with respect to the sixth item, Support Assembly (Part #894170-4181) as set forth herein. The classification of the other articles is not affected by this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF HOUR METERS

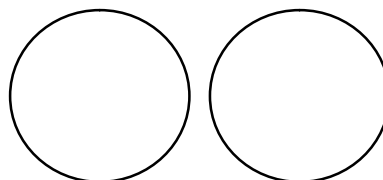
AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of hour meters.

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 hour meters under the Harmonized Tariff Schedule of the United States ("HTSUS"), and any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on January 2, 2002. 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 April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 927-2388.



SUPPLEMENTARY INFORMATION:

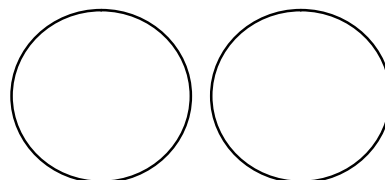
BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on January 2, 2002, proposing to revoke NY H81276, dated June 14, 2001, a ruling letter pertaining to the tariff classification of hour meters. No comments were received in response to the notice.

As stated in the proposed notice, this revocation 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, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.



Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY H81276 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 965244. 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. HQ 965244 is set forth as the attachment to this document.

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

Dated: February 4, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, February 4, 2002.
CLA-2 RR:CR:GC 965244 GOB
Category: Classification
Tariff No. 9106.90.55

ARTHUR K. PURCELL
SANDLER, TRAVIS & ROSENBERG, PA.
*551 Fifth Avenue
New York, NY 10176*

Re: Hour Meters; NY H81276 revoked.

DEAR MR. PURCELL:

This is in reply to your letter of August 2, 2001, in which you request reconsideration of NY H81276 dated June 14, 2001, issued to a customs broker on behalf of SenDEC Corporation, by the Director, Customs National Commodity Specialist Division, New York, regarding the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of certain hour meters. We have reviewed the classification set forth in NY H81276 and have determined that it is incorrect. This ruling sets forth the correct classification.

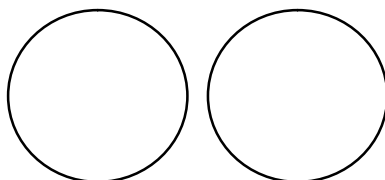
Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY H81276, as described below, was published in the CUSTOMS BULLETIN on January 2, 2002. No comments were received in response to the notice.

Facts:

In your letter of August 2, 2001, you describe the hour meters as follows:

*** two (2) styles (rectangular and round) of panel mounted hour meters. These articles are battery-powered, solid-state opto-electronic display (LCD) devices designed to measure and display intervals of time, specifically the running time of a small engine *** The only difference between the two article styles is the shape of the case; all other components and functions are identical.

* * * * *



They have "clock movements" as defined in the tariff. Clock movements are broadly defined in Additional U.S. Note 1(d) to Chapter 91 as "devices regulated by a balance wheel and hairspring, quartz crystal or any other system capable of determining intervals of time" (emphasis supplied). The subject hour meters determine intervals of time through the following system. An internal 3V lithium battery powers a custom control circuit and an opto-electronic display. The custom control circuit looks for an external input signal as a trigger to initiate monitoring functions of the engine. Measurement of engine running time is the base function of the article (although other monitoring functions are possible after programming). The signals generated from the engine can be spark plug noise (inductive pick up), DC input signal, or AC input signal, depending upon the model. These input signals are received from the engine and in no way power the hour meters; rather, the units are battery powered. An internal microprocessor records time when prompted by the input signal.

* * * at the time of importation, the Inductive Input hour meters are generally programmed as hour meters. This is their condition as imported * * * such articles could be programmed as hour meters with tachometer functions after importation, but prior to shipment to customers * * * at the time of importation the circuit boards that will be used for hour meters and tachometers are identical, and * * * each unit is programmed after importation.

In NY H81276, Customs classified the hour meters in subheading 9106.10.00, HTSUS, as: "Time of day recording apparatus and apparatus for measuring, recording or otherwise indicating intervals of time, with clock or watch movement or with synchronous motor * * *". Time registers; time-recorders."

Issue:

What is the classification under the HTSUS of the subject hour meters?

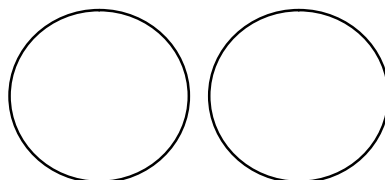
Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). 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's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

- 9106 Time of day recording apparatus and apparatus for measuring, recording or otherwise indicating intervals of time, with clock or watch movement or with synchronous motor (for example, time registers, time-recorders):
 - 9106.10.00 Time registers; time-recorders
 - * * * * *
 - 9106.90 Other:
 - Other:
 - Apparatus for measuring, recording, or otherwise indicating intervals of time, with clock or watch movements, battery powered:
 - 9106.90.55 With opto-electronic display only
 - * * * * *
 - 9029 Revolution counters, production counters, taximeters, odometers, pedometers and the like; speedometers and tachometers, other than those of heading 9014 or 9015; stroboscopes; parts and accessories thereof:
 - 9029.10 Revolution counters, production counters, taximeters, odometers, pedometers and the like:
 - 9029.10.80 Other



9029.20 Speedometers and tachometers; stroboscopes:
 9029.20.40 Other speedometers and tachometers

EN 90.29 provides in pertinent part as follows:

This heading includes: (A) Counters indicating a total number of units of any kind (revolutions, items, length, etc.) * * *

* * * * *

(A) **COUNTING DEVICES**

(1) **Revolution counters.** These instruments count the number of revolutions of a mechanical part (e.g., machine shaft).

* * * * *

(3) **Counters for indicating the working hours of machines, motors, etc., (time or hour meters).** In practice, these are revolution counters calibrated in working hours.

[All emphasis in original.]

EN 91.06 provides in pertinent part as follows:

Provided they are operated by a movement of the watch or clock type (including secondary or synchronous motor clock movements) or by a synchronous motor with or without reduction gear, this heading covers: * * * (ii) **Apparatus, not** elsewhere specified, for measuring, recording or otherwise indicating intervals of time.

* * * * *

The heading includes:

(1) **Time-registers** for recording the arrival and departure of employees in factories, workshops, etc * * *

(2) **Time-recorders** similar to the time-registers described in (1) above but marking also the month, the year, a serial number or other indications; some of these instruments are also equipped with a device for totalling up working hours (e.g., per day or per week) * * *

[All emphasis in original.]

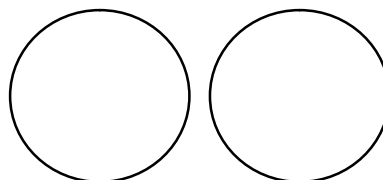
Our review of this matter indicates that the hour meters are goods described in the text of heading 9106, HTSUS, i.e., they are apparatus for measuring intervals of time, with clock or watch movements. However, the hour meters are neither time registers nor time-recorders. See the descriptions of time registers and time-recorders in EN 91.06, excerpted above. Accordingly, they are not properly classified in subheading 9106.10.00, HTSUS. We find that the hour meters are described in subheading 9106.90.55, HTSUS, as: “* * * apparatus for measuring, recording or otherwise indicating intervals of time, with clock or watch movement * * *; * * * Other: * * * Other: Apparatus for measuring, recording, or otherwise indicating intervals of time, with clock or watch movements, battery powered: With opto-electronic display only.”

Consideration has been given to classification of the hour meters in heading 9029, HTSUS. See EN 90.29, excerpted above, which provides that counting devices within heading 9029, HTSUS, include: “Counters for indicating the working hours of machines, motors, etc. (time or hour meters).” However, the next sentence of EN 90.29 provides: “In practice, these are revolution counters calibrated in working hours.” The subject hour meters are not revolution counters. Moreover, the subject hour meters are not any of the specific items stated in heading 9029, i.e., they are not revolution counters, production counters, taximeters, odometers, pedometers, speedometers, or tachometers. Accordingly, we find that the subject hour meters are not described in heading 9029, HTSUS.

Classification of the hour meters in subheading 9106.90.55, HTSUS, is consistent with the following rulings. In HQ 955626 dated February 7, 1995, we stated that the “trip elapsed time” component of an automobile trip computer was classified in heading 9106, HTSUS. HQ 955626 was affirmed in HQ 958997 dated October 21, 1996. In NY 854538 dated July 30, 1990, we classified a solid-state electronic engine hour meter (a “running time meter”) in subheading 9106.90.80, HTSUS.

Holding:

The hour meters are classified in subheading 9106.90.55, HTSUS, as: “* * * apparatus for measuring, recording or otherwise indicating intervals of time, with clock or watch movement * * *; * * * Other: * * * Other: Apparatus for measuring, recording, or otherwise indicating intervals of time, with clock or watch movements, battery powered: With opto-electronic display only.”



Effect on Other Rulings:

NY H81276 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

REVOCATION OF RULING LETTERS AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF ELECTRONIC
EDUCATIONAL DEVICES

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

ACTION: Notice of revocation of ruling letters and treatment relating to tariff classification of electronic educational devices.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking six rulings relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of electronic educational devices, and revoking any treatment Customs has previously accorded to substantially identical transactions. Notice of the proposed modification was published on January 2, 2002, in the CUSTOMS BULLETIN.

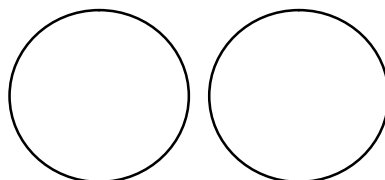
EFFECTIVE DATE: These revocations are effective for merchandise entered or withdrawn from warehouse for consumption on or after April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 927-1638.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility**. These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the



Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on January 2, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 1, proposing to revoke six rulings relating to the tariff classification of electronic educational devices. No comments were received. As stated in the proposed notice, these revocations will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice 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 subsequent to the effective date of this final decision.

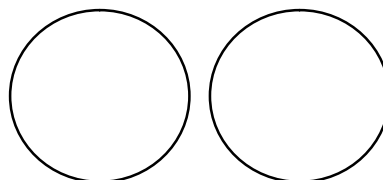
Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY B87631, NY B87626, NY E80895, NY B86267, NY B87857 and NY C86650, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis in HQ 965319, which is set forth as the attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

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

Dated: February 4, 2002.

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

[Attachment]



[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 4, 2002.

CLA-2 RR: CR: GC
Category: Classification
Tariff No. 8543.89.96

MR. A. ARNDT
TEAM CONCEPTS NORTH AMERICA, LTD.
331 Eisenhower Lane South
Lombard, IL 60148

Re: NY B86267, NY C86650, NY E80895, NY B87631, NY B87626 and NY B87857 re-
voked; Electronic educational devices.

DEAR MR. ARNDT:

In NY B87626, issued to you on July 21, 1997, NY C86650, issued to you on April 20, 1998 and NY E80895, issued to you on April 27, 1999, the Director, National Commodity Specialist Division, New York, classified various electronic educational devices in subheading 8469.11.00, Harmonized Tariff Schedule of the United States (HTSUS), as word processors. In NY B87631, issued to you on July 22, 1997, and NY B87857, issued to you on July 24, 1997, the Director, National Commodity Specialist Division, New York, classified various other electronic educational devices in subheading 8472.90.95, HTSUS, as other office machines. NY B86267, issued to you on June 9, 1997, similar merchandise was classified in subheading 8472.90.90, HTSUS, which was the predecessor provision for other office machines.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of the above identified rulings was published on January 2, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 1. No comments were received. Our decision follows.

Facts:

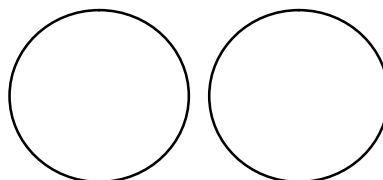
The merchandise described in B87626 is a model A0725 "ComQuest Scholar." It is a multi-functional educational device designed for children ages 6 and up, grades 1-3. It consists of a liquid crystal display (LCD), a mouse and a QWERTY keyboard with special function keys for various activities. This multifunctional device has an electronic data bank of 40 multi-level educational games and activities for math, spelling, grammar, Homework Helper™ games and more. The device also has a mini word processor with built-in memory and spell checker.

The merchandise described in NY C86650 is a model A0800 Electronic Talking "ComQuest Gold" multi-functional educational device designed for children ages 9 and up. It consists of a LCD screen, a QWERTY keyboard with special function keys for various activities, and a mouse. The electronic data bank of educational activities include math, strategy, publishing and more. It incorporates a mini word processor and built-in memory.

The merchandise described in NY E80895 is a model A0920 Electronic Talking "ComQuest Pro." It is a multi-functional educational device designed for children ages 6 and up, or grades 1-3. This device consists of a LCD screen, a QWERTY keyboard, a mouse and a mousepad. The electronic data bank features 64 activities to strengthen children's learning skills, including language and word activities, strategy games, artistic games, math games, Homework Helper™ games and more. The device also incorporates a mini word processor with chart maker and spell checker. Additional memory cartridges to expand storing capabilities are sold separately.

The merchandise described in NY B87631 is a model A0170 Electronic Talking "Junior Computer Plus," which is an educational device for children ages 5 and up. It incorporates a LCD screen, a QWERTY keyboard and a mouse. The "Junior Computer Plus" is a multi-functional unit that features a data bank with 29 activities for reinforcing children's learning skills. Up to two children can participate in activities and games for spelling, numbers, music, time, riddles, memory and grammar.

The merchandise described in B87857 is a model A0735 Electronic Talking "ComQuest Explorer." It is a multi-functional educational device designed for children ages 5 and up, grades K-2. It consists of a LCD screen, QWERTY keyboard, a mouse and a mousepad.



The device incorporates an electronic databank of 36 educational activities that enhance spelling, reading, counting, math, time-telling and more. It also has a mini word processor and memory. Additional memory cartridges to expand storing capabilities are sold separately.

The merchandise described in NY B86267 is a model A0700 Electronic Talking "Com-Quest Smart Station". It is a multi-functional educational device designed for grades 4-7, ages 9 and up. It consists of a LCD screen, QWERTY keyboard and mouse. It connects to your color television set for full color animation. It incorporates 52 educational activities for math vocabulary, spelling, grammar and it has various Homework Helper™ games. It performs databank activities such as address book, scheduler, unit conversion, alarm, stopwatch and doodle faces. The device also includes word processing and data retrieval. Additional memory cartridges to expand storing capabilities are sold separately.

Each of the six models has a printer port and are compatible with paper printers that are sold separately.

Issue:

What is the classification of the described multi-functional electronic educational devices?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. 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 GRIs may then be applied.

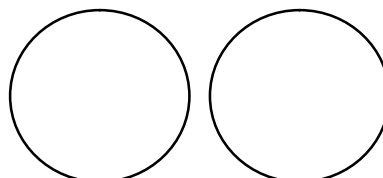
In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized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

The HTSUS provisions under consideration are as follows:

8496	Typewriters other than printers of heading 8471; word processing machines:
	Automatic typewriters and word processing machines:
8469.11.00	Word processing machines
*	* * * * *
8472	Other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil sharpening machines, perforating or stapling machines):
8472.90	Other:
8472.90.95	Other
*	* * * * *
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and apparatus:
8543.89	Other:
	Other:
8543.89.96	Other

The models subject to NY B87626, NY C86650 and NY E80895 were classified as word processing machines in subheading 8469.11.00, HTSUS. EN 84.69(5) provides, in pertinent part, that word processing machines are comprised of:

* * * a keyboard, one or more large-capacity memories (e.g., disc, minidisc or cassette), a visual display unit and a printer. The various components may be housed in a single unit or be in separate units connected by cables. Word-processing machines may be fitted with interfaces permitting, for example, relay to other word-processing



machines, to phototype-setting equipment, to automatic data processing machines, or to telecommunications systems. Their ability to correct or compose texts is greater than that of automatic typewriters. Their ability to perform arithmetical operations does not compare with that of automatic data processing machines * * * they cannot take the logical decision during processing to modify the execution of a program.

Further, the commercial definition of word processing machines is best summarized by the definition found in *The Computer Glossary*, sixth edition: “**word processing machine**: Computer that is specialized only for word processing functions.”

There is no question that the ComQuest Scholar, ComQuest Gold and ComQuest Pro have word processing capabilities. However, they are not word processors for purposes of tariff classification because they are not word processing machines as defined in the EN’s, nor do they satisfy the commercial meaning. These machines do not have large-capacity memory and they do not incorporate printers. The machines have educational games and other features not associated with word processing machines. Further, the letters submitted to the National Commodity Specialist Division, New York requesting rulings on these articles state that the machines incorporate “mini” word processors. Thus, the machines have admittedly limited word processing capabilities.

Moreover, word processing is simply one of the learning tools. In fact, Professor Helen C. Barrett of the University of Alaska Anchorage published an article in 1994 about teaching elementary school children on word processors in school. She found that the goal of increasing the children’s writing was achieved by using the medium of a laptop word processor. And some authors suggest that keyboarding is less laborious than handwriting for young children. See *The Computing Teacher*, October, 1994, reprinted at <http://trans-union.alaska.edu/www/SOE/ed626readings/Laptops.html>, visited on December 5, 2001.

Section XVI, note 3, HTSUS, states:

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

The subject models incorporate word processing features with educational games, computing tools, etc. They are not word processors, but rather are adapted for the purpose of performing two or more complimentary or alternative functions. They are composite machines that should be classified according to principal function. The principal function of these machines is that of an educational article or device.

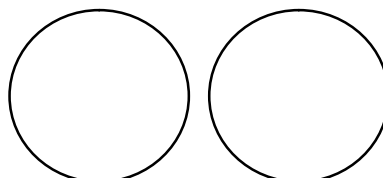
The subject models’ purpose, composition, advertising, etc. is that of an educational device to aid children’s learning process in various areas, including computer skills, writing, math, spelling, vocabulary, grammar and even geography and other subjects. The word processing capabilities reinforce what children learn in school, just as the games and Homework Helper™ do. Thus, the ComQuest Scholar, ComQuest Gold and ComQuest Pro are electronic educational devices.

Educational devices are not specifically provided for in the HTSUS. Heading 8543 provides for other electrical machines and apparatus having individual functions not specified or included elsewhere in the chapter. The EN to heading 8543 states that all electrical appliances and apparatus having individual functions not falling in any other heading in Chapter 85 and not covered more specifically in any other Chapter of the Nomenclature falls under that heading. Accordingly, the ComQuest Scholar, ComQuest Gold and ComQuest Pro are properly classified in subheading 8543.89.96, HTSUS which provides for other electrical machines and apparatus having individual functions, not specified or included elsewhere in this chapter; parts thereof: other machines and apparatus: other: other: other: other.

We turn now to the models subject to NY B87631, NY B86267 and NY B87857, which were classified as other office machines in subheading 8472.90.95, HTSUS and predecessor subheading 8472.90.90, HTSUS. EN 84.72 provides, in pertinent part:

The term “office machines” is to be taken in a wide general sense to include all machines used in offices, shops factories, workshops, schools, railway stations, hotels, etc., for doing “office work” (i.e., work concerning the writing, recording, sorting, filing, etc., of correspondence, documents, forms, records, accounts, etc.).

In HQ 086649, dated May 4, 1990, Customs determined that the Precomputer 1000 junior was not an office machine because it was not the type of machine used in an office, school, railway station, hotel, etc. for doing office work of the kind listed in the EN. The



machine was determined to be an educational article classifiable in heading 8543 as other electrical machines and apparatus having individual functions, not specified or included elsewhere in Chapter 85. Several other electronic educational devices were also classified under heading 8543, and not under heading 8472 for the same reason. *See, e.g.*, HQ 086577, dated May 4, 1990, HQ 087599, dated March 5, 1991, HQ 088494, dated April 19, 1991 and HQ 955845, dated August 22, 1994.

Similarly, the Junior Computer Plus, ComQuest Explorer and ComQuest SmartStation are not office machines because they are not designed to be used in an office, school, railway station, hotel, etc., for office work of the kind listed above. Like the ComQuest Scholar, ComQuest Gold and ComQuest Pro, these three are composite machines whose principal function is that of an educational device. As stated above, education devices are not specifically provided for in the HTSUS. Thus, the Junior Computer Plus, ComQuest Explorer and ComQuest SmartStation are properly classified in subheading 8543.89.96, HTSUS, which provides for, "Electrical machines and apparatus having individual functions, not specified or included elsewhere in this chapter; parts thereof: other machines and apparatus: other: other: other: other."

Holding:

For the reasons stated above, the subject six models of multi-functional electronic educational articles are classified in subheading 8543.89.96, HTSUS, as "electrical machines and apparatus having individual functions, not specified or included elsewhere in this chapter; parts thereof: other machines and apparatus: other: other: other: other."

Effect on Other Rulings:

NY B87626, dated July 21, 1997, NY C86650, dated April 20, 1998, NY E80895, dated April 27, 1999, NY B87631, dated July 22, 1997, and NY B87857, dated July 24, 1997, NY B86267, dated June 9, 1997, are 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.

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

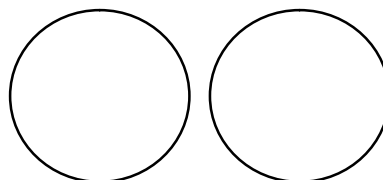
PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TARIFF TREATMENT RELATING TO THE
TARIFF CLASSIFICATION OF A TEXTILE BAG DESIGNED FOR
A DOWN COMFORTER

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and revocation of treatment relating to the tariff classification of a textile bag designed for a down comforter.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs intends to revoke one ruling letter pertaining to the tariff classification of a textile bag designed for a down comforter and to revoke any treatment previously accorded by Customs to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before March 22, 2002.



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

FOR FURTHER INFORMATION CONTACT: Rebecca Hollaway, Textiles Branch, (202) 927-2394.

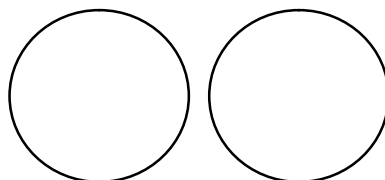
SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke one ruling letter pertaining to the tariff classification of a textile bag designed for a down comforter. Although in this notice Customs is specifically referring to New York Ruling Letter (NY) D85011, dated December 7, 1998 (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 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 which is contrary to the position set forth in the proposed ruling letter, 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. This treatment may, among other reasons, be the result of the



U.S. CUSTOMS SERVICE

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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. Any person involved in substantially identical transactions 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 a rebuttable presumption of a lack of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Customs intends to revoke the above-mentioned ruling letter and re-classify the textile bag designed for a down comforter under heading 6307, HTSUS, for the reasons set forth in Proposed HQ 962663 (Attachment B). Customs further intends to revoke any other ruling not specifically identified, in order to classify this merchandise under heading 6307, HTSUS. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Dated: February 4, 2002.

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

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, December 7, 1998.

CLA-2-42:RR:NC:341 D85011
Category: Classification
Tariff No. 4202.92.3031

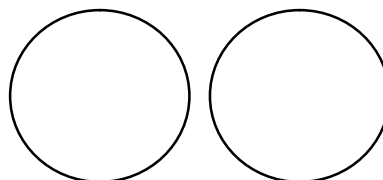
MS. PHYLLIS LOCKLEAR
IMEX VINYL PACKAGING
5311 77 Center Drive
Suite #95
Charlotte, NC 28217-0751

Re: The tariff classification of a duffel bag of textile materials from China.

DEAR MS. LOCKLEAR:

In your letter dated November 20, 1998, you requested a tariff classification ruling. Your sample has been destroyed upon examination and will not be returned as requested.

A sample of a duffel bag has been submitted. It is not identified by style number. The bag is manufactured of a non-woven fabric of polypropylene fibers. The bag measures 30 inches high and has a base diameter of approximately 17 inches. The top is closed by means of a



cord and is secured by means of a cord lock. The bag is of a class or kind similar in design and utility to a duffel bag.

The applicable subheading for the duffel bag will be 4202.92.3031, Harmonized Tariff Schedule of the United States (HTS), which provides for travel, sport and similar bags, with outer surface of textile materials of man-made fibers. The rate of duty will be 19 percent ad valorem.

Tariff number 4202.92.3031 falls within textile category designation 670. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

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

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 212-637-7091.

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

[ATTACHMENT B]

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

CLA-2 RR:CR:TE 962663 RH
Category: Classification
Tariff No. 6307.90.9889

MS. PHYLLIS LOCKLEAR
GENERAL MANAGER
IMEX VINYL PACKAGING
531177 Center Drive, Suite 95
Charlotte, NC 28217-0751

Re: Proposed Revocation of NY D85011; Classification of a draw string bag of nonwoven textile materials; storage bag; heading 4202 vs. heading 6307.

DEAR MS. LOCKLEAR:

This is in reply to your letter of March 15, 1999, requesting reconsideration of New York Ruling Letter D85011, dated December 7, 1998. In that ruling, Customs classified a textile bag designed to store a down comforter in subheading 4202.92.3031 of the Harmonized Tariff Schedule of the United States (HTSUS), as a traveling bag designed to contain clothing or other personal effects during travel.

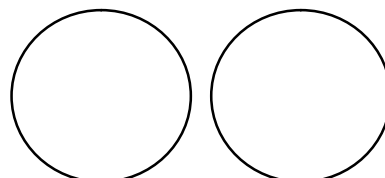
Facts:

The merchandise under consideration is a bag manufactured of a nonwoven fabric of polypropylene fibers. The bag measures 30 inches high and has a base diameter of approximately 17 inches. The top closes by means of a drawstring cord and is secured by a cord lock. The nonwoven polypropylene fiber material has a continuous pattern of small holes intended to permit the comforter to breathe.

In your letter, you state that the bag is a "one-time-only use bag for the conveyance of a product." We note, however, that the bags are not imported with the comforters.

Issue:

What is the proper classification for the subject merchandise?



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.

Bags of textile materials similar to the subject merchandise have been classified in both headings 4202 and 6307, HTSUS, depending upon their construction and the purpose(s) for which they are designed. Bags classified outside of heading 4202, HTSUS, are generally those considered not specially designed to contain particular item(s), or not adequately constructed to sustain repeated use.

Heading 4202, HTSUS, provides for "Trunks, suitcases, vanity cases * * * 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 * * * sports bags * * * and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper."

The Explanatory Notes to the Harmonized Commodity Description and Coding System (EN) to heading 4202 suggest that the expression "similar containers" in the first part of the heading "includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc." With regard to the second part of heading 4202, the EN indicate that the expression "similar containers" indicates articles which must be wholly or mainly composed of the materials specified therein. There is no requirement that the articles be specially shaped or fitted.

Upon further review of this matter, we agree with you that the bag in question is designed for the conveyance of a down comforter and is not of a kind similar to a bag designed to contain clothing during travel. The bag is not capable of providing the protection requisite of a traveling bag and is not adequately constructed to sustain repeated use.

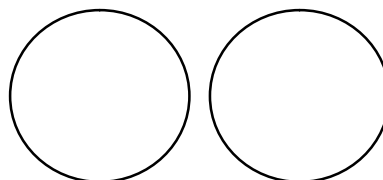
Finally, we note that the bag cannot be classified as packing material under GRI 5, HTSUS, as it is not imported with the comforter.

Accordingly, since the bag is not more specifically provided for in another heading it is classified under subheading 6307.90.9889, HTSUS, as an other made up textile article.

Holding:

NY D85011 is REVOKED. The textile bag is classified under subheading 6307.90.9889, HTSUS. It is dutiable at the general column one rate at 7 percent *ad valorem*.

JOHN DURANT,
Director,
Commercial Rulings Division.



PROPOSED MODIFICATION AND REVOCATION OF CUSTOMS RULING LETTERS RELATING TO THE APPLICABILITY OF CUSTOMS POSITION ON WHO IS CONSIDERED A PASSENGER UNDER THE COASTWISE LAWS (46 U.S.C. APP. 289, 19 CFR 4.50(B))

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

ACTION: Notice of Proposed Revocation and Modification of Rulings.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI of the North American Free Trade Implementation Act (Pub. L. 103-82, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify its position regarding which persons are considered to be passengers under the coastwise laws and to revoke all prior rulings inconsistent with this proposed modification. Customs is proposing to take a more restrictive interpretation regarding which persons transported on a vessel are considered passengers under the coastwise laws. Under this interpretation of the passenger provisions, persons transported on a vessel will be considered passengers unless they are directly and substantially connected with the operation, navigation, ownership, or business of that vessel. Customs is proposing to reinterpret the passenger provisions to provide that persons transported free of charge as inducement for future patronage or good will are considered passengers. In addition, under this proposal persons transported on a vessel for reasons connected to business interests not directly related to the business of the vessel itself will be considered passengers.

DATE: Comments must be received on or before March 22, 2002.

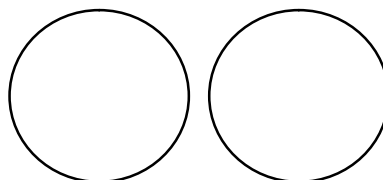
ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert S. Dinerstein, Entry Procedures and Carriers Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229 (202) 927-1454.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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 Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify its position concerning which persons are considered to be passengers under the coastwise laws and to revoke all rulings which are inconsistent with this proposed change in position.



Customs invites comments on the correctness of this proposed modification and revocation.

Under 46 U.S.C. 289—

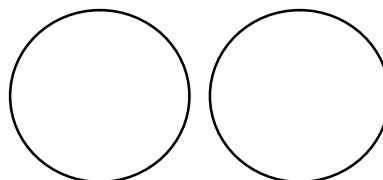
No foreign vessel shall transport passengers between ports or places in the United States either directly or by way of a foreign port under a penalty of \$200 for each passenger so transported and landed.

The Customs Service has consistently interpreted this provision to apply to all vessels except United States-built owned and properly documented vessels (see 46 U.S.C. 12106 and 12110, 46 U.S.C. App. 883, and 19 CFR 4.80). The Customs Regulations are issued under the authority of 46 U.S.C. App. 883.

The Customs Regulations issued under the authority of 46 U.S.C. App. 289 are found in §4.80a (19 CFR 4.80a). This section of the Customs Regulations contains a number of definitions of terms used as well as interpretations of section 289 relating to the transportation of passengers by vessels. The term passenger is defined in §4.50(b) of the Customs Regulations (19 CFR 4.50(b)), as any person carried on a vessel who is not connected with the operation of such vessel, her navigation, ownership, or business.

This longstanding definition of “passenger” can be traced back to an interpretation of the steamboat inspection laws. In General Letter No. 117 of May 20, 1916, it was determined that wives and children of the officers of a vessel and of a company owning the vessel were not passengers since they were connected to the ownership and business of the vessel. However, stockholders in that company and members of their families were considered passengers since they did not have a substantial connection to the ownership or business of the vessel. These interpretations evolved into a general rule that whenever a person is transported in a vessel without the owner or operator receiving compensation for the transportation, that person is not considered to be a passenger. Whenever such compensation is received the person transported is *prima facie* considered to be a passenger.

In applying the above referenced definition of passenger over the years, the Customs position on determining who is a passenger under 19 CFR 4.50 has been largely based on case-by-case determinations. This has resulted in many inconsistent and contradictory rulings regarding whether certain individuals would be considered passengers under 46 U.S.C. App. 289 and 19 CFR 4.50(b). In one recent ruling, Headquarters Ruling 115034 dated May 22, 2000, Customs ruled that individuals referred to as friends, colleagues, business associates, representatives, commercial sponsors, and contributors were not connected with the operation, navigation, ownership or business of the vessel and thus such individuals were considered passengers within the meaning of 46 U.S.C. App. 289 and 19 CFR 4.50(b). Accordingly, transporting such individuals on the vessel entirely within U.S. territorial waters, on cruises be-

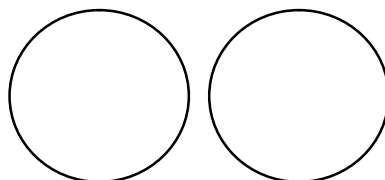


tween U.S. ports, and on cruises between U.S. ports via a nearby foreign port was prohibited.

However, in a number of other rulings Customs held that guests entertained for the purpose of promoting good will or with the thought that those who are entertained will favor their hosts with new or increased business is a use of a vessel for "pleasure purposes" and the "guests" were not considered passengers. For example, in Headquarters Ruling Letter (HRL) 113878 dated April 1, 1997, we found that certain persons who were transported aboard a Cayman Islands documented pleasure vessel by political and charitable organizations for funding raising were not passengers. HRL 11378 is set forth as Attachment A to this document.

There are numerous other headquarters rulings which reach contradictory conclusions regarding whether particular persons transported on a vessel are considered passengers under 46 U.S.C. App. 289 and 19 CFR 4.50(b). Customs recognizes that it is difficult to reconcile these contradictory rulings and that greater clarity and consistency are needed in interpreting which persons transported on vessels are passengers. In order to be consistent with the restrictive nature of the coastwise laws, Customs believes that a stricter interpretation regarding which persons transported on a vessel are considered passengers should be adopted. Under the revised interpretation that Customs is proposing, the term passenger will include persons who are transported on a vessel for whom a vessel owner or operator receives or expects to receive any compensation, direct or indirect, even if in the form of patronage or good will. This means that Customs intends to revoke or modify any ruling holding that persons transported as an inducement for future patronage or good will are not passengers. This change would not affect Customs current position that bona fide guests of an owner or bareboat charterer of a pleasure vessel or yacht are not passengers for purposes of the coastwise laws.

Customs also believes that the sound administration of 19 C.F.R. 4.50(b) requires that persons transported on a vessel will be considered passengers unless it can be demonstrated that they are directly and substantially connected with the operation, navigation, ownership, or business of the vessel itself, and not merely with some related interest of the vessel owner. The result of this interpretation would mean that persons who are transported on a vessel in connection with some aspect of a vessel owner's business interests unrelated to the business of the vessel itself would be passengers. A typical scenario that Customs often encounters is one in which a vessel owner also has other business interests unrelated to the vessel, and that owner seeks to use the vessel in connection with those other business interests. Under this proposed revised interpretation of the term "passenger", persons transported on a vessel for reasons connected to business not directly related to the business of the vessel itself would be considered passengers. For example, if the owner uses the vessel to transport employees of the other business,



under Customs proposed revised interpretation of the term passenger, such persons would be considered passengers because they are not directly and substantially connected to the business of the vessel itself. The result would be that such persons would be required to be transported in a coastwise-qualified vessel when transported between United States coastwise points. However, if a vessel owner can establish that persons transported on a vessel are directly connected to some business aspect of the vessel of itself, those persons would not be considered passengers.

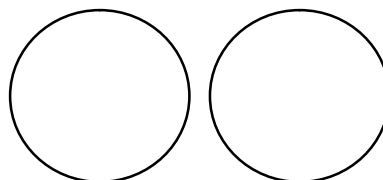
Customs also recognizes that there will continue to be many situations where it is difficult to decide which persons transported on vessels should be considered passengers, and that some decisions regarding whom to identify as a passenger will still have to be made on a case-by-case basis. Nevertheless, we want to emphasize that the focus of this proposal is that due to the restrictive nature of the coastwise laws, Customs intends to apply a more restrictive interpretation in deciding which persons transported on vessels would be considered passengers. Accordingly, the burden will fall on vessel owners to establish that persons transported on their vessels are not passengers subject to the coastwise laws.

Modifications:

Customs intends to modify HRL 113878 so that persons who are transported aboard a foreign flag pleasure vessel by political and charitable organizations would be considered passengers within the meaning of section 4.50(b) of the Customs Regulations (19 CFR 4.50). Proposed HRL 115072 is set forth in Attachment B to this document. In addition Customs intends to modify or revoke other ruling letters which are contrary to the Customs position regarding who is considered a passenger under the Coastwise Laws. We have undertaken reasonable efforts to search existing databases for rulings on this issue. We have identified the following 12 additional rulings which we intend to modify or revoke with respect to their findings that certain persons transported on a vessel would not be considered passengers under 19 CFR 4.50(b). The rulings that we have identified are:

- 1) Headquarters Ruling Letter 114343 dated June 18, 1998.
- 2) Headquarters Ruling Letter 113017 dated February 9, 1994.
- 3) Headquarters Ruling Letter 109781 dated November 7, 1988.
- 4) Headquarters Ruling Letter 108501 dated August 29, 1986.
- 5) Headquarters Ruling Letter 108278 dated April 2, 1986.
- 6) Headquarters Ruling Letter 108239 dated March 14, 1986.
- 7) Headquarters Ruling Letter 108147 dated March 3, 1986.
- 8) Headquarters Ruling Letter 107028 dated October 18, 1984.
- 9) Headquarters Ruling Letter 105612 dated May 19, 1982.
- 10) Headquarters Ruling Letter 104276 dated October 22, 1979.
- 11) Headquarters Ruling Letter 102756 dated April 7, 1977.
- 12) Treasury Decision 69-120(4) dated April 30, 1969.

Customs also recognizes that the above list may not be complete and that there may exist other ruling letters which have not been identified



which are inconsistent with this notice. Accordingly, this notice is intended to cover any ruling which pertains to whether persons transported on vessels are considered passengers under 19 CFR 4.50(b). Customs also intends to revoke and/or modify all other previously issued ruling letters with findings which are inconsistent with this notice. Before modifying or revoking the above-cited rulings or other similar rulings pertaining to which individuals are considered passengers as the term is used in 19 CFR 4.50(b), consideration will be given to any written comments timely received.

Dated: February 5, 2002.

CHARLES D. RESSIN,
(for Sandra L. Bell, Director,
International Trade Compliance Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, April 1, 1997.
VES-3-RR:IT:EC 113878 LLB
Category: Carriers

MR. ROBB R. MAASS
*321 Royal Poinciana Plaza, South
Post Office Box 431
Palm Beach, FL 33480-0431*

Re: Definition of passenger; Yachts; Charitable and political organizations; Reimbursement for expenses; 46 U.S.C. App. 289; 19 CFR 4.50(b).

DEAR MR. MAASS:

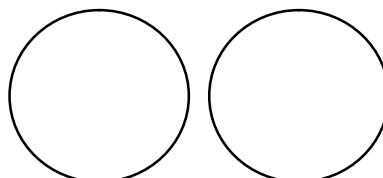
Reference is made to your letter of March 7, 1997, in which you seek a ruling on the proposed use in the United States of a foreign-registered pleasure vessel. Our findings in response to your inquiry are as stated below.

Facts:

A corporation organized under the laws of the British Virgin Islands owns a 163-foot Turkish-built yacht which is registered in the Cayman Islands. It is stated that the vessel will be arriving in the United States during the month of April. The corporate owner desires to offer the vessel for the use of political and charitable organizations in this country as a venue for fund raising events. The owner would not receive compensation from the organizations utilizing the vessel, but may be compensated for the cost of food and entertainment. It is anticipated that the company may seek to obtain a charitable tax deduction for the value of services provided. During some of the events it is likely that the vessel would remain dockside, but during others the vessel would be underway and would likely remain within United States waters.

Issue:

Whether persons transported aboard a foreign-flag pleasure vessel by political and charitable organizations under circumstances as described above would be considered to be passengers within the meaning of section 4.50(b) of the Customs Regulations (19 CFR 4.50(b))



Law and Analysis:

The Act of June 19, 1886, as amended (24 Stat. 81; 46 U.S.C. App. § 289, sometimes called the coastwise passenger law), provides that:

No foreign vessel shall transport passengers between ports or places in the United States either directly or by way of a foreign port, under a penalty of \$200 for each passenger so transported and landed.

For your general information, we have consistently interpreted this prohibition to apply to all vessels except United States-built, owned, and properly documented vessels (see 46 U.S.C. §§ 12106, 12110, 46 U.S.C. App. § 883, and 19 C.F.R. § 4.80).

The definition of "passenger" for purposes of enforcement of the coastwise laws is contained in section 4.50(b) of the Customs Regulations (19 CFR 4.50(b)), and includes any person not connected with the ownership, operation, navigation or business of the vessel upon which transportation is provided.

The definition of a prohibited "passenger" in this area has, been the subject of varying interpretations as demonstrated in administrative rulings. One early ruling issued by the Department of Commerce, Bureau of Navigation (General Letter No. 117, dated May 20, 1916), interpreted the term for purposes of the Steamboat-Inspection Laws, finding that a stockholder of the corporation owning a vessel is a passenger when transported aboard that vessel. Similarly, in directly confronting the question in relation to 19 CFR 4.50(b), Customs stated in a letter of August 29, 1960 (MA 217.1), that:

* * * newspapermen or cruise agents who merely accompany the vessel for publicity purposes and cruise passage sales promotion are not persons connected with the operation, navigation, ownership, or business of the vessel within the meaning of section 4.50(b) of the Customs Regulations. The activity of the persons involved is only remotely or indirectly connected with the operation or business of the vessel rather than being direct and immediate as is contemplated by the regulations.

More recent rulings have reached the opposite result. In a ruling of April 2, 1986 (case number 108278) it was held that the clients of a corporate charterer are not "passengers." In a ruling of October 22, 1979 (104276), it was stated that:

We have ruled that the entertainment of guests for the purpose of promoting good will or with the thought that those who are entertained will favor the hosts with new or increased business is a use of a vessel for pleasure purposes. Consequently, such guests would not be considered "passengers", within the * * * coastwise laws.

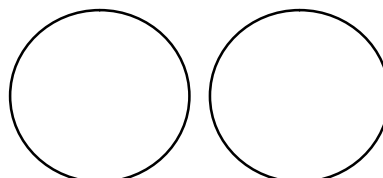
In a ruling dated October 18, 1984 (107028), it was held that the clients, prospective clients, business associates, and employees of the corporate owner of a yacht were not passengers within the meaning of section 289.

Given the fact that the circumstances here involved are strikingly similar to those in which we have found no violation of section 289, we are disposed to find that the persons to be transported aboard the vessel in this case are not passengers.

Holding:

The carriage of persons aboard the vessel in question by charitable or political organizations for no monetary consideration, the purpose of which is fund raising for those organizations, is not a violation of 46 U.S.C. App. 289. The issue of the possibility of charitable tax deductions surrounding the proposed activities is a matter within the jurisdiction of federal, state, and local taxing agencies.

JERRY LADERBERG,
Acting Chief,
Entry and Carrier Rulings Branch.



[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.
VES-3-RR:IT:EC 115072RSD
Category: Carriers

MR. ROBB R. MAASS
321 Royal Poinciana Plaza, South
Post Office Box 431
Palm Beach, FL 33480-0431

Re: Definition of passenger; Yachts; Charitable and political organizations; Reimbursement for expenses; 46 U.S.C. App. 289; 19 CFR 4.50(b).

DEAR MR. MAASS:

In our ruling number 113878 of April 1, 1997, we found that certain persons transported aboard your client's Cayman Islands documented pleasure vessel were not considered to be passengers as that word is defined in section 4.50(b) of the Customs Regulations (19 CFR 4.50(b)). We have reconsidered this position and now believe it to be incorrect.

Facts:

At the time we issued our 1997 ruling (HQ 113878) we recited the following factual background. A corporation organized under the laws of the British Virgin Islands owns a 163-foot Turkish-built yacht which is registered in the Cayman Islands. It is stated that the vessel will be arriving in the United States during the month of April. The corporate owner desires to offer the vessel for the use of political and charitable organizations in this country as a venue for fund raising events. The owner would not receive compensation from the organizations utilizing the vessel, but may be compensated for the cost of food and entertainment. It is anticipated that the company may seek to obtain a charitable tax deduction for the value of services provided. During some of the events it is likely that the vessel would remain dockside, but during others the vessel would be underway and would likely remain within United States waters.

Issue:

Whether persons transported aboard a foreign-flag pleasure vessel by political and charitable organizations under circumstances as described above would be considered to be passengers within the meaning of section 4.50(b) of the Customs Regulations (19 CFR 4.50(b)).

Law and Analysis:

The Act of June 19, 1886, as amended (24 Stat. 81; 46 U.S.C. App. § 289, sometimes called the coastwise passenger law), provides that:

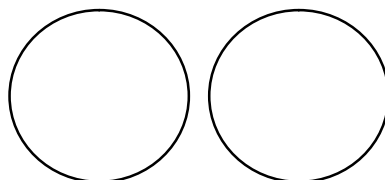
No foreign vessel shall transport passengers between ports or places in the United States either directly or by way of a foreign port, under a penalty of \$200 for each passenger so transported and landed.

For your general information, we have consistently interpreted this prohibition to apply to all vessels except United States-built, owned, and properly documented vessels (see 46 U.S.C. §§ 12106, 12110, 46 U.S.C. App. § 883, and 19 C.F.R. § 4.80).

The definition of "passenger" for purposes of enforcement of the coastwise laws is contained in section 4.50(b) of the Customs Regulations (19 CFR 4.50(b)), and includes any person not connected with the ownership, operation, navigation or business of the vessel upon which transportation is provided.

The definition of a prohibited "passenger" in this area has, been the subject of varying interpretations as demonstrated in administrative rulings. One early ruling issued by the Department of Commerce, Bureau of Navigation (General Letter No. 117, dated May 20, 1916), interpreted the term for purposes of the Steamboat-Inspection Laws, finding that a stockholder of the corporation owning a vessel is a passenger when transported aboard that vessel. Similarly, in directly confronting the question in relation to 19 CFR 4.50(b), Customs stated in a letter of August 29, 1960 (MA 217.1), that:

* * * newspapermen or cruise agents who merely accompany the vessel for publicity purposes and cruise passage sales promotion are not persons connected with the op-



eration, navigation, ownership, or business of the vessel within the meaning of section 4.50(b) of the Customs Regulations. The activity of the persons involved is only remotely or indirectly connected with the operation or business of the vessel rather than being direct and immediate as is contemplated by the regulations.

In HQ 113304, dated January 11, 1995 we determined that the existing or potential clients of the corporate owner were passengers within the meaning of 46 U.S.C. App. 289 and 19 CFR 4.50(b). We noted that the clients were not connected with the operation, navigation, ownership or business of the vessel. Accordingly, we ruled that those individuals could not be transported from one coastwise point to another coastwise point as was proposed.

Similarly, in this instance, it is now our view that the individuals who are transported on the vessel during fund raising events of political and charitable organizations are not directly and substantially connected with the operation, navigation, ownership or business of the vessel. Thus, such individuals would be considered passengers even though no direct monetary consideration is given to the vessel owner. Accordingly, for these individuals, cruises entirely within U.S. territorial waters, cruises between U.S. ports, and cruises between U.S. ports via nearby foreign ports would be prohibited. However, the activities described which do not involved transporting individuals between places in the United States, such as receptions while the vessel is moored or anchored either at a U.S. port or within the U.S. territorial waters would not be in violation of the coastwise laws.

Holding:

Persons who are transported aboard a foreign-flag pleasure vessel by political and charitable organizations would be considered passengers within the meaning of section 4.50(b) of the Customs Regulations (19 CFR 4.50). Consequently, the carriage of such persons aboard the vessel in question for the purpose of fund raising for the charitable and political organizations would be in violation of 46 U.S.C. App. 289 even though there is no monetary consideration exchanged for the voyage. The issue of the possibility of charitable tax deductions surrounding the proposed activities is a matter within the jurisdiction of federal, state, and local taxing agencies.

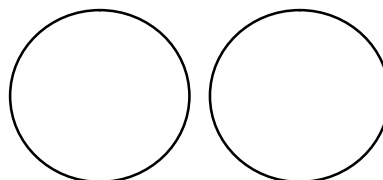
LARRY L. BURTON,
Chief,
Entry Procedures and Carriers Branch.

MODIFICATION OF RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO TARIFF CLASSIFICATION
OF SMALL COMPUTER SYSTEM INTERFACE (SCSI)
CONTROLLER CARDS INCLUDED IN "BUZ" MULTIMEDIA BOX
SYSTEMS

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to tariff classification of Small Computer System Interface ("SCSI") controller cards that come included in a complete "Buz" Multimedia box system.

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 a ruling letter pertaining to the tariff classification of SCSI controller cards that are included in complete



“Buz” Multimedia box systems under the Harmonized Tariff Schedule of the United States (“HTSUS”). Similarly, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed revocation was published on January 2, 2002, in the CUSTOMS BULLETIN. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 22, 2002.

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

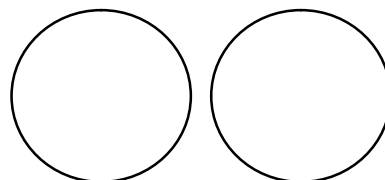
SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to Customs obligations, a notice was published on January 2, 2002, in Vol. 36, No. 1 of the CUSTOMS BULLETIN, proposing to revoke NY C83022, dated January 9, 1998, which classified classified a complete “Buz” multimedia box under subheading 8471.80.90, HTSUS. No comments were received in response to this notice.

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



third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during 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 may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY C83022 to reflect the proper classification of the SCSI controller cards under sub-heading 8471.80.90, HTSUS, which provides for other, other units of an automatic data processing system pursuant to the analysis set forth in proposed HQ 964939 which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625 (c)(2), Customs is revoking any treatment it previously accorded to substantially identical transactions.

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

Dated: February 5, 2002.

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

[Attachment]

[ATTACHMENT]

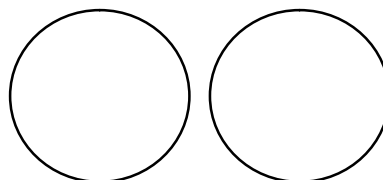
DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, February 5, 2002.
CLA-2 RR: CR: GC 964939 TPB
Category: Classification
Tariff No. 8471.80.10

MR. DIPAN KARUMSI
ALLYN INTERNATIONAL SERVICES, INC.
*6290 Corporate Court, Suite C201
Ft. Myers, FL 33919*

Re: "Buz" Multimedia System; SCSI Controller Card; NY C83022 Modified.

DEAR MR. KARUMSI:

This is in reference to NY C83022, issued to you on January 9, 1998, by the Director, National Commodity Specialist Division ("NCSA"), New York, in response to your letter dated December 23, 1997, on behalf of the Iomega Corporation, requesting the classification of a "Buz" multimedia box under the Harmonized Tariff Schedule of the United States ("HTSUS"). We have had an opportunity to review that ruling and that find it is inconsistent with previous rulings as to the classification of the SCSI controller card. This ruling modifies NY C83022 to the extent noted.



Pursuant to 625 (c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY C83022 was published on January 2, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 1. No comments were received in response to that notice.

Facts:

According to your letter, the "Buz" Box is a desktop unit that provides an interface for audio, video and photo multimedia into a personal computer ("PC"). The break-out box allows real-time-motion-JPEG video capture—729 x 480 resolution at 30 fps, through an ultra SCSI (small computer system interface) controller card which connects to a PCI slot in the back of the central processing unit ("CPU"). Permanently attached to the box is a 15 position female D-subconnector which connects into the PC through the SCSI card, and two 3.5mm stereo plugs which connect directly to the back of the PC.

The finished package includes:

- 1) The break-out box itself: a plastic box encasing a circuit board, which is the mounting for the four sets of RCA plugs. The plugs include:
 - a) right audio In/Out
 - b) left audio In/Out
 - c) S-video In/Out
 - d) Composite video In/Out
- 2) A video patch cable, used to connect the break-out box to an external video source (ex: VCR; video camera; etc.).
- 3) A SCSI controller card, installed in the back of a PC, used for connecting the break-out box to the CPU. The SCSI card functions to digitize analog signals from video sources.
- 4) Two CD-ROM software packages for editing and enhancing video, photo and audio.

You had requested classification of the complete system, as well as of all of the major components if imported separately.

NY C83022 determined that the proper classification for the complete Buz multimedia system would be under subheading 8471.80.90, HTSUS. The break-out box, SCSI controller card and video patch cable, when imported separately were classified under subheadings 8471.80.90; 8473.30.10 and 8544.41.80 (if V is less than 80) or 8544.51.90 (if V exceeds 80, but not over 1,000 V), HTSUS, respectively. The applicable subheading for the two CD-ROM disks was 8524.39.40, HTSUS. As a retail set pursuant to GRI 3(b) the break-out box and SCSI card together, are classifiable in subheading 8471.80.90, HTSUS, with the essential character provided by the break-out box.

Issue:

Are the SCSI controller cards contained within the "Buz" multimedia system properly classified under subheading 8471.80.10, HTSUS, as units of automatic data processing machines, other; control or adapter units, or under 8473.30.10, HTSUS, as parts and accessories * * * suitable for use solely or principally with machines of headings 8469 to 8472: parts and accessories of the machines of heading 8471: not incorporating a cathode ray tube: printed circuit assemblies?

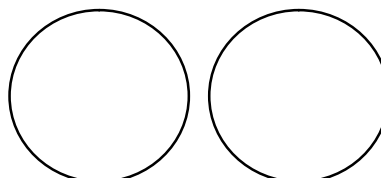
Law and Analysis:

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

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

The HTSUS provisions that are under consideration are as follows:

- | | |
|------------|---|
| 8471 | Automatic data processing machines and units thereof * * *: |
| 8471.80 | Other units of automatic data processing machines: |
| 8471.80.10 | Control or adapter units. |



- 8473 Parts and accessories * * * suitable for use solely or principally with machines of heading 8469 to 8472:
- 8473.30 Parts and accessories of the machines of heading 8470:
 - Not incorporating a cathode ray tube:
 - 8473.30.10 Printed circuit assemblies.

SCSI cards are generally printed circuit boards ("PCBs") populated with a SCSI controller, memory chip that stores identification information, power source, diodes, resistors, capacitors and buffers used for driving current. Generally speaking, SCSI cards allow personal computers to communicate with peripheral hardware such as disk drives, tape drives, CD-ROM drives, printers and scanners faster and more flexibly than previous interfaces. SCSI cards are adapters by virtue of enabling the transfer of data from the host computer to the peripherals and vice-versa, where the data remains intact and the adapting function is to implement the standard protocols on both sides of the transfer. The SCSI card presently at issue also has the additional function of digitizing analog signals from a video source.

As per Section XVI, Note 2(a), (subject to note 1 of Section XVI, note 1 to chapter 84 and note 1 to chapter 85) parts which are goods included in any of the headings of chapters 84 and 85 are in all cases to be classified in their respective headings.

NY 879916, dated November 9, 1992, classified a remote SCSI controller under subheading 8471.99.15, HTSUS (precursor to subheading 8471.80.10, HTSUS), as a control or adapter unit. In operation, these SCSI controllers received commands from the host computer, which were then translated by the controller into proprietary commands to control document scanners. Noting GRI 2(a), this SCSI controller board had the essential character of a finished or complete controller unit that was designed and used with automatic data processing machines.

GRI 2(a) states that any reference to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. In this case, the SCSI controller board has the essential character of a finished or complete controller unit that was designed and used with automatic data processing machines.

Legal Note 5(B) to chapter 84, HTSUS, provides guidance regarding units of automatic data processing machines. It states that "[a]utomatic data processing machines may be in the form of systems consisting of a variable number of separate units." A unit is to be regarded as a part of the complete system if it meets all of the following conditions:

- (a) It is of a kind solely or principally used in an automatic data processing system;
- (b) It is connectable to the central processing unit whether directly or through one or more other units; and
- (c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

The Harmonized Commodity Description and Coding System ENs for 84.71—Automatic Data Processing Machines and units thereof, Part (I) (D) describe separately presented ADP units as follows:

This heading also covers separately presented constituent units of data processing systems. Constituent units are those defined in Parts (A) (Digital machines) and (B) (Analogue machines) as being parts of a complete system.

* * * * *

Apart from central processing units and input and output units, examples of such units include:

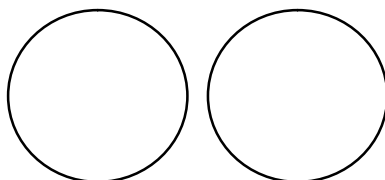
* * * * *

(4) **Control and adaptor units** such as those to effect interconnection of the central processing unit to other digital processing machines or to groups of input or output units which may comprise visual display units, remote terminals, etc. This category includes channel to channel adaptors used to connect two digital systems to each other.

(5) **Signal converting units.** At input, these enable an external signal to be understood by the machine, while at output, they convert the output signals that result from the processing carried out by the machine into signals which can be used externally.

* * * * *

The SCSI card presently at issue incorporates both functions of a control and adapter unit and a signal-converting unit. Control and adapter boards usually incorporate signal



conversion or signal formatting functions (see HQ 951331, dated September 18, 1992, and HQ 952659, dated October 7, 1992, which modifies the former). The "Buz" box effects interconnection of a PC to the break-out box, which is an ADP unit. The fact that the SCSI card needs to be incorporated within a system housing or chassis does not mandate their classification as a part (see *General Electric Company v. United States*, 2 CIT 84, 1981). Although it is a part of the "Buz" box, the SCSI card is more fully described by terms of subheading 8471.80.10, HTSUS, and is thus properly classified under that subheading, rather than in subheading 8473.30.10, HTSUS. This decision is consistent with previous Customs classifications on similar merchandise (see NY 879916, November 9, 1992).

Holding:

For the reasons stated above, by authority of GRI 1 and 2(a), the SCSI controller card is classified under subheading 8471.80.10, HTSUS, which provides for "Automatic data processing machines and units thereof * * *: Other units of automatic data processing machines: Control or adapter units."

Effect on other Rulings:

NY C83022 is modified to the extent described above, i.e., the SCSI controller card is classifiable as a control or adapter unit of an ADP machine. All other classification determinations in NY C83022 remain unaffected. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF CONTROL PADS
FOR USE WITH TOY SETS

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

ACTION: Notice of revocation of ruling letter and revocation of treatment relating to the classification of control pads for use with toy sets.

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, and is revoking any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification of control pads for use with toy sets under the Harmonized Tariff Schedule of the United States (HTSUS). Notice of the proposed revocation was published on January 2, 2002, in Vol. 36, No. 1 of the CUSTOMS BULLETIN. No comments were received.

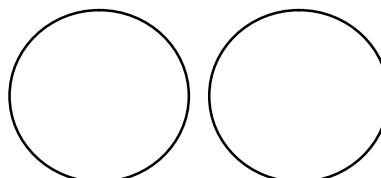
EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich,
General Classification Branch: (202) 927-2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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



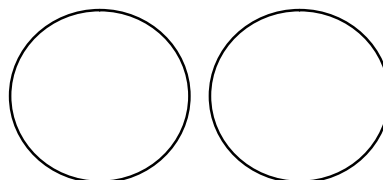
103–182, 107 Stat. 2057) (hereinafter “Title VI”), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are “**informed compliance**” and “**shared responsibility.**” These concepts are premised on the idea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

Pursuant to Customs obligations, notice proposing to revoke NY D84425, dated November 18, 1998, was published on January 2, 2002, in Vol. 36, No. 1 of the CUSTOMS BULLETIN. No comments were received in response to this notice.

As stated in the proposed notice, this revocation action 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 have advised 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 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 HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer’s reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to the effective date of this final decision.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY D84425, and any other ruling not specifically identified, to reflect the proper classification of the control pads, only in instances in which they are imported separately from any other article, under subheading 8537.10.9070, HTSUS, which provides for boards, panels, consoles,



desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, for a voltage not exceeding 1000V, other, other, pursuant to the analysis in HQ 965360, which is set forth as the Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

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

Dated: February 5, 2002.

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

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, February 5, 2002.
CLA-2 RR:CR:GC 965360 AML
Category: Classification
Tariff No. 8537.10.9070

MS. SUSAN KOHN ROSS
S. K. ROSS & ASSOC., P. C.
ATTORNEYS AT LAW
5777 West Century Blvd.
Suite 520
Los Angeles, CA 90045-5659

Re: Control pads for toy sets; NY D84425 revoked.

DEAR MS. ROSS:

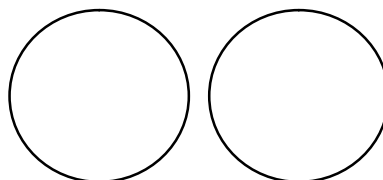
This is in reference to New York Ruling Letter (NY) D84425, issued to you by the Director, Customs National Commodity Specialist Division on November 18, 1998, which concerned the classification of a control pad for toy sets under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered NY D84425 and now believe that the classification set forth is incorrect.

Pursuant to section 625(c)(1), 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), a notice was published on January 2, 2002, in Vol. 36, No. 1 of the CUSTOMS BULLETIN, proposing to revoke NY D84425 and to revoke the treatment pertaining to the control pads for toy sets when imported separately from any other article. No comments were received in response to this notice.

Facts:

The articles were described in New York Ruling Letter (NY) D84425, dated November 18, 1998, as follows:

The item (# 04710), marketed as Rokenbok's Control Pads, are designed to be used in conjunction with Rokenbok's toy building sets. These control pads are specifically designed for facilitating the operation, by a child, of radio controlled toy vehicles.



In a related ruling (NY D82030, dated September 16, 1998), Customs described the toy set, in pertinent part, as follows:

The Command Deck incorporates a technology called "Addressable Multi-Player Digital Radio Control" (ARM-RC), which uses digital Multi-plexing so that a single radio transmitter is capable of simultaneously controlling multiple RC toys. The Command Deck utilizes an AC adapter for electrical power and incorporates a single frequency radio transmitter. It is white in color and measures approximately 9 inches x 1½ inches x 8½ inches in width, height and depth, respectively. It has an 8 inch antenna in its center which is surrounded by slots for eight "radio keys." It also has four ports on the front which allow for the connection of up to four (4) hand-held Control Pads, which players use to control up to eight (8) RC vehicles. The white hand-held Control Pad contains eight (8) light emitting diode indicators which show the player(s) which of the eight (8) possible RC vehicles has been selected.

Issue:

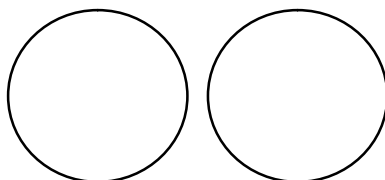
Whether the control pads, imported separately from any other article, are classifiable under subheading 8529.90.19, HTSUS, which provides for parts suitable solely or principally with apparatus of headings 8525 to 8528: other: of radar * * * or remote control apparatus: other: other; under subheading 8537.10.00, HTSUS, which provides for boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, for a voltage not exceeding 1000V, other; or under subheading 9503.70.00, HTSUS, which provides for other toys, put up in sets or outfits, and parts and accessories thereof?

Law and Analysis:

The General Rules of Interpretation (GRIs) to the HTSUS govern the classification of goods in the tariff schedule. GRI 1 states in pertinent part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]"

The HTSUS provisions under consideration are as follows:

8526	Radar apparatus, radio navigational aid apparatus and radio remote control apparatus: Other:
8526.92.00	Radio remote control apparatus.
*	* * * * *
8529	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528:
8529.90	Other: Printed circuit assemblies: Of radar, radio navigational aid or radio remote control apparatus:
8529.90.16	Assemblies and subassemblies, consisting of 2 or more parts or pieces fastened or joined together:
8529.90.19	Other:
*	* * * * *
8537	Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517:
8537.10	For a voltage not exceeding 1,000 V:
8537.10.90	Other:
8537.10.9070	Other:
*	* * * * *
9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.70.00	Other toys, put up in sets or outfits, and parts and accessories thereof.



We reiterate that the issue being considered is the classification of the control pad when it is imported separately from any other article. The classification of machinery and mechanical appliances, electrical equipment and parts thereof, among other things, are classifiable pursuant to the Notes to Section XVI, HTSUS. The Notes to Section XVI provide in pertinent part that the section does not cover: "(p) articles of Chapter 95." The General ENs to Section XVI provide, in pertinent part, that:

(A) Subject to certain exclusions provided for in the Notes to this Section and to Chapters 84 and 85 and apart from goods covered more specifically in other Sections, this Section covers all mechanical or electrical machinery, plant, equipment, apparatus and appliances and parts thereof[.]

* * * * *

The main exclusions from the Section are:

(h) Machinery and apparatus having the character of toys, games or sports requisites and identifiable parts and accessories thereof (including non-electric motors and engines but **excluding** pumps for liquids and filtering or purifying machinery for liquids or gases, which fall in **heading 84.13** or **84.21**, respectively, and also **excluding** electric motors, electric transformers and radio remote control apparatus, which fall in **heading 85.01**, **85.04** or **85.26**, respectively) which are suitable for use solely or principally with toys, games or sports requisites (**Chapter 95**)**[bold in original]**.

We interpret this language to mean the following: toys, games or sports requisites and identifiable parts and accessories thereof are excluded from Section XVI and non-electric motors and engines are included in the exclusion. Pumps for liquids and filtering or purifying machinery for liquids or gases (which fall in heading 84.13 or 84.21, respectively) and electric motors, electric transformers and radio remote control apparatus, which fall in heading 85.01, 85.04 or 85.26, respectively) are excluded parenthetically from the exclusion; that is, those articles fall to be classifiable within Section XVI. Based on this interpretation, we conclude that radio remote control apparatus are included within the ambit of Section XVI.

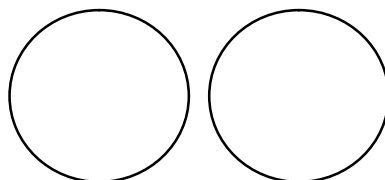
Thus, if the control pad is classifiable under either heading 8529 or 8537, HTSUS, it cannot be classified under heading 9503, HTSUS. Contrariwise, if the control pad is classifiable in Chapter 95, it cannot be classified in Chapter 85.

The Harmonized Commodity Description And Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Heading 8526, HTSUS, covers radar apparatus, radio navigational aid apparatus and radio remote control apparatus. The ENs to the heading provide, in pertinent part, that the heading includes "(11) radio apparatus for the remote control of * * * toys" and that, subject to the Notes to Section XVI, "parts of the apparatus of this heading are classified in heading 8529." Heading 8529, HTSUS, covers parts suitable for use solely or principally with the apparatus of headings 8525 to 8528. The ENs to the heading provide, in pertinent part, that "subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), this heading covers parts of the apparatus of the four preceding headings," including obviously heading 8526, HTSUS.

Heading 8537, HTSUS, covers electronic control apparatus. The ENs to the heading provide that the articles classifiable therein generally "consist of an assembly of apparatus of the kind referred to in the two preceding headings (e.g., switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc." and that the articles "vary from small switchboards with only a few switches, fuses, etc. (e.g., for lighting installations) to complex control panels for machine-tools, rolling mills, power stations, radio stations, etc., including assemblies of several of the articles cited in the text of this heading." We assume for the purposes of this ruling that the control pads convert the tactile depression of its buttons to electronic signals that are transmitted over its attached wire. We believe that it is by these means that the control pad functions.

Note 3 to Chapter 95, HTSUS, provides in pertinent part that "subject to Note 1 above, parts and accessories which are suitable for use solely or principally with articles of this chapter are to be classified with those articles." Note 1(m) to Chapter 95 provides that ra-



dio remote control apparatus are excluded from classification in Chapter 95. See also the ENs to heading 9503, HTSUS.

An article is to be classified according to its condition as imported. See, *XTC Products, Inc. v. United States*, 771 F.Supp. 401, 405 (1991). See also, *United States v. Citroen*, 223 U.S. 407 (1911). In its condition as imported, the control pad is a hand held electrical device incapable of providing amusement. It is our opinion that the control pad, imported separately from any other article, is provided for as a control device. Therefore, the article, in its condition as imported, cannot be classified under heading 9503, HTSUS.

Holding:

The control pads are classifiable under subheading 8537.10.9070, HTSUS, which provides for boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, for a voltage not exceeding 1000V, other, other.

Effect on Other Rulings:

NY D84425 is revoked. In accordance with 19 U.S.C. §1625 (c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

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

