

U.S. Customs Service

General Notices

OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, March 5, 2003

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

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

MODIFICATION AND REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF MEN'S AND BOYS' SWIMWEAR

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

ACTION: Notice of modification and revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of a men's and boys' garment.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is modifying New York Ruling Letter (NY) I85950, relating to the tariff classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a men's garment; and revoking NY I88096, relating to the tariff classification under the HTSUSA of a boys' garment. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise that is contrary to this notice. Notice of the proposed modification and revocation was published on December 26, 2002, in Volume 36, Number 52, of the CUSTOMS BULLETIN. Two comments were received.

EFFECTIVE DATE This action is effective for merchandise entered or withdrawn from warehouse or for consumption on or after May 19, 2003.

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on December 26, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 52, proposing to modify one ruling, NY I85950, dated September 13, 2002, and revoke any tariff treatment pertaining to the tariff classification of a men's garment. Two comments were received in response to this notice. The comment from Land's End, Inc. advised that it had received a ruling letter (NY I88095, dated October 31, 2002) in which virtually identical merchandise (other than sized for boys rather than for men) was classified as boys' shorts in subheading 6203.43.4040, HTSUSA. It was requested that the same analysis applied to NY I85950, be applied to the garment that was the subject of NY I88095, and that NY I88095 be revoked to reflect that the garment is properly classifiable as swimwear in subheading 6211.11.1020, HTSUSA.

As stated in the proposed notice, this modification and revocation will cover any rulings on this merchandise that may exist but which 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 the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise. This treatment may, among other reasons, be the re-

sult of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUSA. Any person involved with substantially identical merchandise should have advised Customs during this notice period. An importer's failure to advise Customs of substantially identical merchandise or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY I85950, as well as revoking NY I88095, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 965981 and HQ 966228, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise. HQ 965981, modifying NY I85950, and revoking any treatment relating to tariff classification, is set forth as "Attachment A" to this document. HQ 966228, revoking NY I88095, and revoking any treatment relating to tariff classification is set forth as "Attachment B" to this document.

Dated: March 3, 2003.

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

[Attachments]

[ATTACHMENT A]

U.S. CUSTOMS SERVICE,
Washington, DC, March 3, 2003.
CLA-2 RR:TC:TE 965981 SG
Category: Classification
Tariff No. 6211.11.1010

MS. AMANDA WILSON
DILLARD'S CUSTOMS COMPLIANCE DEPT.
DILLARD'S INC.
*1600 Cantrell
Little Rock, AR 72201*

Re: Modification of New York Ruling (NY) I85950, dated September 13, 2002; Men's woven swimwear, heading 6211, HTSUS; shorts, heading 6203, HTSUS.

DEAR MS. WILSON:

This is in response to your letter dated October 8, 2002, in which you ask the Customs Service to reconsider, in part, New York ruling (NY) I85950, issued to you on September 13, 2002, regarding the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a men's short with attached drawstring pouch, designated as Style S35MX402. The garment was classified under subheading 6203.43.4030,

HTSUSA, in the provision for men's shorts. It is your opinion that the subject merchandise should be classified as men's swimwear in subheading 6211.11.1010, HTSUSA. We have reviewed that ruling and found it to be partially in error. Therefore, this ruling modifies NY I85950.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI, a notice was published on December 26, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 52, proposing to modify NY I85950, dated September 13, 2002, and to revoke any tariff treatment pertaining to the tariff classification of men's shorts. Two comments were received in response to this notice.

Facts:

The submitted garment, Style S35MX402, is a pair of men's shorts with a woven 100% nylon outer shell and a knit mesh liner. The garment has a relaxed fit and measures approximately 19 inches from the waist to the hemmed bottom of the leg. The garment has a fly front, which is fastened secure by means of a hook and loop fabric tape. The waistband is partially elasticized (the back portion) and has an interior drawstring inserted into the waistband. On the front inner portion of the waistband, the drawstring exits at two spots approximately six inches distant from each other and is then threaded back through the front outer portion of the waistband forming a four grommet lace-up tie closure. The garment also features two side seam pockets partially lined with mesh fabric (which allows for water to escape the pocket), and two inches below the waistband, an exterior back patch pocket with mesh fabric forming part of the pocket front and a flap with a tab on the back pocket, and a coin or key pocket on the interior right side of the waistband. The exterior rear pocket has a hook and loop fabric tape closure. The garment has two contrasting colored overlaid stripes approximately one inch above the hemmed leg openings. The garment was produced in China.

The garment will be imported with a matching drawstring pouch. The pouch measures approximately 7 inches by 9 inches and has a separate bottom to afford storage for the garment. It has a drawstring-like locking closure. It is tacked to the garment and will be sold at retail with the garment. It will not be offered for separate retail sale.

Issue:

Whether the submitted sample is properly classified as men's swimwear, heading 6211, HTSUS, or men's shorts, heading 6203, HTSUS?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes, taken in order. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRIs will be applied, in the order of their appearance.

In *Hampco Apparel, Inc. v. United States*, 12 CIT 92 (1988), the Court of International Trade stated that three factors must be present if a garment is to be considered swimwear for tariff purposes:

- (1) the garment has an elasticized waistband through which a drawstring is threaded,
- (2) the garment has an inner lining of lightweight material, namely nylon tricot, and
- (3) the garment is designed and constructed for swimming.

Beyond possessing the listed criteria, the court determined that the garment at issue was designed, manufactured, marketed and intended to be used as swimwear. The court therefore concluded that the garment before it was properly classified as swimwear.

Although the *Hampco* decision involved classification of swimwear under the previous tariff schedule, i.e., the Tariff Schedules of the United States, it is relevant to decisions under the HTSUSA as the tariff language at issue is the same and the current tariff does not offer any new or different guidance regarding the distinction between swimwear and shorts.

The *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88, November 23, 1988, also provide guidance in classifying garments as either men's shorts or swimwear. The *Guidelines* state:

Garments commercially known as jogging or athletic shorts are normally loose-fitting short pants usually extending from the waist to the upper thigh and usually have an elastic waistband. They may resemble swim trunks for men, boys, or male infants,

which are not included in this category. Swim trunks will usually have an elasticized waist with a drawstring and a full lightweight support liner. Garments which cannot be recognized as swim trunks will be considered shorts.

In Headquarters Ruling Letter (*HRL*) 081477, dated March 21, 1988, we stated that in order to determine whether a garment is designed and constructed for swimming, we will first look at the appearance of the garment. If the appearance is inconclusive, the following evidence will be considered: the way in which the garment has been designed, manufactured, marketed or advertised; the way in which the manufacturer or importer intends the garment to be used, and the way in which a garment is chiefly used. See HQ 952751, dated January 12, 1993; HQ 952209, dated October 2, 1992; HQ 951841, dated August 11, 1992; and HQ 950501, dated December 17, 1991. As such, Customs analysis is in fact, a two part test, that is, (a) examination of the physical attributes of the garment (three *Hampco* features); and (b) where ALL three features are not present, we then look to the design, manufacture, marketing or advertising; intended use of the garment and principal use of the garment for guidance.

In the case of the subject merchandise, it is apparent that the submitted sample meets the first criteria: It has an elasticized waistband (there is no requirement that the entire waistband be elasticized). See, HQ 087264, dated June 13, 1990.

The drawstring on the submitted sample is threaded through all but the center five or six inches of the waistband. The ends of the drawstring are then threaded and drawn through 4 spaced grommets in a lacing fashion on the center of the waistband before the ends are tightened and tied. The drawstring on the garment before us serves to tighten the entire span of the waistband, while keeping the lace-up front of the waistband relatively flat. The tightening provided by the drawstring is not minimal and serves the function of adjusting the size of the waistband. Accordingly, it is our view that the garment has a functional drawstring. The garment therefore meets the second criteria.

Customs has been consistent in ruling that even in those instances where the first two factors enumerated by the court in *Hampco* are present, the third factor (the garment is designed and constructed for swimming) must still be present. The garment is made of a woven outer shell fabric and possesses a mesh liner. The fabric used to construct this article is relatively lightweight, quick drying, and will not retain an inordinate amount of water. The garment's outseam length is not so long so that it inhibits swimming. The pockets have been constructed to facilitate drainage. We note that garment pocket openings which allow for drainage is a feature that is only useful when found on swim trunks. Accordingly, these features indicate that the garment has been designed principally for swimming and thus qualifies as men's swimwear in heading 6211, HTSUSA.

The shorts are packaged inside a matching bag and the shorts and bag are sold together at retail. In *HRL 955787* of April 26, 1994, Customs classified a pair of men's flannel boxers sold inside a matching carrying bag. In that ruling, Customs classified the carrying bag and shorts as a composite good. We stated therein:

In *HRL 087280*, dated July 16, 1990 we addressed the tariff classification of a carrying bag imported with a poncho. The carrying bag was not specially shaped or fitted to hold its contents and was suitable for repetitive use. We concluded that the poncho and the bag constituted a composite article pursuant to General Rule of Interpretation 3(b), with the poncho imparting its essential character. Similarly, in *HRL 086343*, dated July 13, 1990, we classified a carrying bag sold with a windbreaker as a composite article with the essential character imparted by the garment. Recently, we classified a textile drawstring bag imported with blocks as a composite article and concluded that the blocks lent the essential character to the unit.

The instant carrying bag is sold as a unit with the shorts. It is not specially shaped or fitted to hold its contents and is suitable for repetitive use. Based upon the foregoing precedent, the carrying bag and shorts shall be classified as a composite article. The shorts lend the essential character to the unit. Accordingly, the carrying bag shall be classified with the shorts.

As this case is virtually identical to the situation in *HRL 955787*, i.e., shorts in a bag, the goods at issue here are classified as composite goods and the shorts impart the essential character.

Holding:

The submitted pair of shorts, style S35MX402, is properly classified in subheading 6211.11.1010, HTSUS, the provision for "Track suits, ski-suits and swimwear; other gar-

ments: Swimwear: Men's or boys': Of man-made fibers: Men's", textile category 659, dutiable at the column one rate of 28.2 percent ad valorem.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations 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 issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

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

NY I85950, dated September 13, 2002, is hereby MODIFIED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

[ATTACHMENT B]

U.S. CUSTOMS SERVICE,
Washington, DC, March 3, 2003.
CLA-2 RR:TC:TE 966228 SG
Category: Classification
Tariff No. 6211.11.1020

SARAH M. NAPPI, ESQ.
MILLER & CHEVALIER
655 Fifteenth Street, N.W.
Washington, DC 20005-5701

Re: Revocation of New York Ruling (NY) I88095, dated October 31, 2002; Boys' woven swimwear, heading 6211, HTSUS; shorts, heading 6203, HTSUS.

DEAR MS. NAPPI:

This is in response to your letter dated January 23, 2003, on behalf of your client, Lands' End, Inc. (Lands' End), commenting on the *Proposed Modification of Ruling Letter and Revocation of Treatment Relating to Tariff Classification of Men's Swimwear*, notice of which appeared in the CUSTOMS BULLETIN, Vol.36, No. 52, December 26, 2002. The notice proposed to modify New York Ruling (NY) I85950, dated September 13, 2002, and to revoke any tariff treatment pertaining to the tariff classification of substantially identical merchandise. NY I85950 classified a men's short with attached drawstring pouch under subheading 6203.43.4030, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), in the provision for men's shorts. The ruling was reviewed and found to be partially in error. You ask the Customs Service to reconsider NY I88095, issued to your client on October 31, 2002, on the substantially identical merchandise. We have reviewed the ruling issued to your client and found it to be in error. Therefore, this ruling revokes NY I88095.

Facts:

The submitted garment, Style 83746B, is described as a pair of "Big Boys Camouflage Cargo Swim Trunks". The garment is made of 100 percent polyester woven fabric with a knit mesh liner. The garment has two cargo style pockets with flaps, and a hook and loop fabric tape closure. These pockets each have two grommet holes for drainage. One cargo style pocket straddles each side seam. The garment has a mock fly front and an elasticized waistband through which a drawstring is threaded. On the front inner portion of the waistband, the drawstring exits at two spots approximately six inches distant from each

other and is then threaded back through the front outer portion of the waistband forming a four grommet lace-up tie closure. The garment has two contrasting colored overlaid stripes approximately one inch above the hemmed leg openings. The garment is produced in Bangladesh.

Issue:

Whether the submitted sample is properly classified as boys' swimwear, heading 6211, HTSUS, or boys' shorts, heading 6203, HTSUS?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes, taken in order. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRIs will be applied, in the order of their appearance.

In *Hampco Apparel, Inc. v. United States*, 12 CIT 92 (1988), the Court of International Trade stated that three factors must be present if a garment is to be considered swimwear for tariff purposes:

- (1) the garment has an elasticized waistband through which a drawstring is threaded,
- (2) the garment has an inner lining of lightweight material, namely nylon tricot, and
- (3) the garment is designed and constructed for swimming.

Beyond possessing the listed criteria, the court determined that the garment at issue was designed, manufactured, marketed and intended to be used as swimwear. The court therefore concluded that the garment before it was properly classified as swimwear.

Although the *Hampco* decision involved classification of swimwear under the previous tariff schedule, i.e., the Tariff Schedules of the United States, it is relevant to decisions under the HTSUSA as the tariff language at issue is the same and the current tariff does not offer any new or different guidance regarding the distinction between swimwear and shorts.

The *Guidelines for the Reporting of Imported Products in Various Textile and Apparel Categories*, CIE 13/88, November 23, 1988, also provide guidance in classifying garments as either men's shorts or swimwear. The *Guidelines* state:

Garments commercially known as jogging or athletic shorts are normally loose-fitting short pants usually extending from the waist to the upper thigh and usually have an elastic waistband. They may resemble swim trunks for men, boys, or male infants, which are not included in this category. Swim trunks will usually have an elasticized waist with a drawstring and a full lightweight support liner. Garments which cannot be recognized as swim trunks will be considered shorts.

In Headquarters Ruling Letter (*HRL*) 081477, dated March 21, 1988, we stated that in order to determine whether a garment is designed and constructed for swimming, we will first look at the appearance of the garment. If the appearance is inconclusive, the following evidence will be considered: the way in which the garment has been designed, manufactured, marketed or advertised; the way in which the manufacturer or importer intends the garment to be used, and the way in which a garment is chiefly used. See HQ 952751, dated January 12, 1993; HQ 952209, dated October 2, 1992; HQ 951841, dated August 11, 1992; and HQ 950501, dated December 17, 1991. As such, Customs analysis is in fact, a two part test, that is, (a) examination of the physical attributes of the garment (three *Hampco* features); and (b) where ALL three features are not present, we then look to the design, manufacture, marketing or advertising; intended use of the garment and principal use of the garment for guidance.

In the case of the subject merchandise, it is apparent that the submitted sample meets the first criteria: It has an elasticized waistband. See, HQ 087264, dated June 13, 1990.

The drawstring on the submitted sample is threaded through all but the center five or six inches of the waistband. The ends of the drawstring are then threaded and drawn through 4 spaced grommets in a lacing fashion on the center of the waistband before the ends are tightened and tied. The drawstring on the garment before us serves to tighten the entire span of the waistband, while keeping the lace-up front of the waistband relatively flat. The tightening provided by the drawstring is not minimal and serves the function of adjusting the size of the waistband. Accordingly, it is our view that the garment has a functional drawstring. The garment therefore meets the second criteria.

Customs has been consistent in ruling that even in those instances where the first two factors enumerated by the court in *Hampco* are present, the third factor (the garment is designed and constructed for swimming) must still be present. The garment is made of a woven outer shell fabric and possesses a mesh liner. The fabric used to construct this article is relatively lightweight, quick drying, and will not retain an inordinate amount of water. The garment's outseam length is not so long so that it inhibits swimming. The pockets have been constructed to facilitate drainage. We note that garment pocket openings which allow for drainage is a feature that is only useful when found on swim trunks. Accordingly, these features indicate that the garment has been designed principally for swimming and thus qualifies as boys' swimwear in heading 6211, HTSUSA.

Holding:

The submitted pair of shorts, style S35MX402, is properly classified in subheading 6211.11.1020, HTSUS, the provision for "Track suits, ski-suits and swimwear; other garments: Swimwear: Men's or boys': Of man-made fibers: Boys'", textile category 659, dutiable at the column one rate of 28.2 percent ad valorem.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations 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 issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

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

NY I88095, dated October 31, 2002, is hereby REVOKED. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

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

PROPOSED REVOCATION OF A RULING LETTER AND REVOCATION OF TARIFF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A COMPACT DISC BOX

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 compact disc box.

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 compact disc box 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 April 18, 2003.

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) 572-8814.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts 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 compact disc box. Although in this notice Customs is specifically referring to one ruling, Headquarters Ruling Letter (HQ) 087690, dated December 7, 1990, (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 issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, 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.

In HQ 087690, Customs classified a compact disc box under subheading 4811.50.4040, HTSUS, as an other packing container, and not as a folding carton under subheading 4811.20, HTSUS, because we found that additional gluing on the interior surfaces of the box exceeded the permissible use of glue for folding cartons. We now find that gluing inserts into the interior of the box does not preclude classification in subheading 4811.20, 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.

Proposed HQ 965223 is set forth as Attachment B to this document.

Dated: March 3, 2003.

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

[Attachments]



[ATTACHMENT A]

U.S. CUSTOMS SERVICE,
Washington, DC, December 7, 1990.
CLA-2 CO:R:C:G 087690 KWM
Category: Classification
Tariff: 4819.50.40

DISTRICT DIRECTOR
ATTN: SIS C.L. NOYES
U.S. CUSTOMHOUSE
127 North Water Street
Ogdensburg, NY 13669

Re: Decision on Application for Further Review of Protest No. 0712-90-000244; Compact disc boxes; Folding boxes; Other packing containers; Paperboard; Record sleeves; Not printed matter; Printing merely incidental to primary use.

DEAR SIR:

This protest was filed against your decision in the liquidation of entry number 331-XXXXXXX-X, entered on XXXX XX, XXXX and liquidated on XXXXXXXX X, XXXX. The shipment contained various items including compact disc boxes. The goods are manufactured in Canada and imported via Champlain, New York. Our decision follows.

Facts:

The goods at issue here are described as "compact disc boxes." They are thin, rectangular boxes designed to hold compact disc recorded media for transport and sale. The boxes

measure approximately 12 inches in length, 6 inches in width, and – inch in thickness. They are made from a single sheet of paperboard, folded lengthwise such that a portion of paperboard forms an inner partition or filler on the inside of the box. The box is assembled by gluing the folded sheet in three locations on two internal surfaces. A square plastic case containing the recorded media is inserted into one end of the box. The folded inner partition fills the remaining volume of the box, keeping the plastic case/compact disc stationary. The ends are then sealed by means of glue. It is our understanding that the length of the box (twice the length of the plastic disc case) is for display purposes. The plastic disc cases have inserts which provide information about the recording. After the disc has been purchased and transported home, the paperboard box is discarded.

The importer asserts two alternative classifications for the boxes. First, subheading 4911.99.60, HTSUSA, as other printed matter, is claimed. In the alternative, the importer claims classification under subheading 4819.20.00, HTSUSA, as folding cartons and boxes. Customs believes the proper classification is subheading 4819.50.40, HTSUSA, providing for other packing containers of paper or paperboard.

Issue:

Are the compact disc boxes classified as printed material under heading 4911 of the Harmonized Tariff Schedule of the United States?

If not, what is the proper classification for these goods?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI's). The systematic detail of the harmonized system 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 relevant 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 be applied, taken in order.

Heading 4911, HTSUSA

Counsel for the importer first contends that the compact disc boxes are classified under heading 4911, HTSUSA, as other printed matter. That conclusion is based on a GRI 3(c) analysis. Counsel asserts that both heading 4819, HTSUSA, and heading 4911, HTSUSA provide for the goods: “[The] two headings [4819 and 4911, HTSUSA] are equally descriptive.” Therefore, by application of GRI 3(c), the heading which occurs last in numerical order is the preferred classification. We disagree. First, we do not believe that a GRI 3(c) is necessary. Under GRI 1, we look to the heading terms and legal notes to classify goods. In their memorandum, counsel asserts that application of Legal Note 11 to Chapter 48, HTSUSA, substantiates the GRI 3(c) analysis. We believe that Legal Note 11 to Chapter 48, HTSUSA, is dispositive, precluding a GRI 3(c) analysis. It provides that:

11. Except for articles of heading 4814 or 4921, paper, paperboard, cellulose wadding or articles thereof, printed with motifs, characters, pictorial representations, which are not merely incidental to the primary use of the goods, fall in Chapter 49.

Therefore, a determination here as to whether or not the printing on the compact disc boxes is “* * * not merely incidental to the primary use of the goods * * *” will serve to exclude either Chapter 48 or 49, HTSUSA from further consideration. No two equally descriptive four-digit headings will be in contention.

Since Legal Note 11 is dispositive, we address here the arguments made in that regard. Counsel asserts that the printing on the boxes is essential to the promotion and marketing of the compact discs: “providing pictorial and textual information about the C.D. on the box for point of purchase displays is what enhances its merchandising potential.” This in turn “adds a significant dimension to their use as containers * * *.” The memorandum is not clear whether the primary use of the boxes is as a marketing and promotional device or as a container. The primary use, in our opinion is a container for transportation, packing and sale of the compact discs. That they are printed with pictorial and textual material does not more than merely incidentally impact on that primary use. The nature of the construction of the box indicates that the package is designed simply to facilitate placement of the compact disc in a retail sales rack. This is not a marketing feature, it is merely an change in the physical dimensions of the disc container for storage purposes. That the printing may have an incidental impact on the sale of the merchandise is within the intended scope of the heading.

Next, counsel compares compact disc boxes to record jackets and relies on a prior Headquarters Ruling Letter (HRL) number 070040, for the proposition that the printing is more than merely incidental. With regard to the prior ruling letter, HRL 070040 was issued under the auspices of the Tariff Schedules of the United States (TSUS), and may be considered for informational purposes only in limited circumstances. They are not binding on future classification issues. Lastly, we note that record “jackets” or “sleeves” are, in our opinion, provided for *eo nomine* within heading 4819, HTSUSA, and not as printed matter. The Explanatory Notes to Chapter 48, heading 4819, HTSUSA, indicate that:

(A) Cartons, boxes cases bags and other packing containers

This group covers containers of various kinds and sizes, generally used for the packing, transport, storage or sale of merchandise, whether or not also having a decorative value.

* * * * *

The article of this group may be printed, e.g., with the name of the merchant, directions for use, illustrations * * *

(Emphasis added). Both compact disc boxes and record jackets contain similar printed information. That record jackets may be classified in subheading 4819, HTSUSA, indicates to us that the same or similar information printed on compact disc boxes does not exclude them from the chapter on the basis of Legal Note 11 to Chapter 48, HTSUSA. In other words, if one is not considered to be “printed matter”, then the other will not either. The disposable nature of the compact disc boxes does not change our opinion. The function and primary use of the product is the same, and meets the criteria for inclusion in heading 4819, HTSUSA.

Subheading 4819.20, HTSUSA

As an alternative classification, counsel suggests subheading 4819.20, HTSUSA, which includes folding cartons, boxes and cases, of non-corrugated paper or paperboard. Counsel discusses the Explanatory Notes to heading 4819, HTSUSA, which include the following: The heading includes folding cartons, boxes and cases. These are:

—cartons, boxes and cases in the flat in one piece, for assembly by folding and slotting (e.g., cake boxes);

and

—containers assembled or intended to be assembled by means of glue, staples, etc., on one side only, the construction of the container itself providing the means of forming the other sides, although, where appropriate, additional means of fastening, such as adhesive tape or staples may be used to secure the bottom or lid.

(Emphasis added). The gist of the discussion is the permissible method(s) of assembly and where glue may be applied. Counsel apparently contends that only one line of glue is attributable to the construction of the actual “box”, the remainder being applied to the inner partition. Therefore, it is more akin to a box with a glued insert, rather than glued on more than one side. In support of this, counsel states the “a careful inspection of the container reveals that only one side of the actual container, along its length, is secured by means of adhesive.” We believe this to be too narrow a definition of “container.” We do not consider this item to be a ‘box-with-adjuncts.’ Instead we view the partition as an integral part of the box’s structure, particularly in light of the folded, single sheet construction described above. We do not believe that a detailed discussion of what constitutes a “side” (i.e., left side, front side, inside and/or outside) is necessary. The Explanatory Notes are of an advisory nature, providing insight into the rationale behind the construction of heading terms. The rationale here is clear:

“Folding boxes” are those secured in a single location during manufacture and intended to be assembled into usable form by folding (for example, folded corrugated cardboard boxes).

Further, exclusion from subheading 4819.20, HTSUSA, is substantiated by considering the types of goods included in both that subheading and subheading 4819.50, HTSUSA. The compact disc boxes here are clearly more *ejusdem generis* to the record sleeves referred to subheading 4819.50, HTSUSA. Even assuming, *arguendo*, that both subheadings describe the goods in equally specific terms, GRI 3(c) would require classification in the latter subheading.

Within subheading 4819.50, HTSUSA, the provision for other packing containers, other, includes these goods in subheading 4819.50.4060, HTSUSA.

Holding:

We hold that the goods at issue here, paperboard compact disc boxes, manufactured in Canada and bearing printed information merely incidental to the use of the articles as containers for the transport, storage and sale of merchandise, were properly classified under subheading 4819.50.4040, HTSUSA, which provides for other packing containers of paperboard. Further, we find that the protest should be denied.

A copy of this decision should be attached to the Form 19 Notice of Action to be sent to the protestant.

JOHN A. DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 965223 RH
Category: Classification
Tariff No. 4819.20.0040

ROSS ELLIS, LTD.
300 Ann Street
Montreal, Quebec H3C 2K2

Re: Proposed Revocation of HQ 087690, dated December 7, 1990; Classification of Compact Disc Box; Folding Cartons, Cases and Boxes; Subheading 4819.50; Subheading 4819.20.

DEAR SIR OR MADAM:

On December 7, 1990, Customs issued Headquarters Ruling Letter (HQ) 087690, denying protest number 0712-90-000244, concerning the classification of a compact disc box. The law firm of Ross & Hardies filed the protest on your behalf.

In denying the protest, Customs classified the compact disc box under subheading 4819.50.4040 of the Harmonized Tariff Schedule of the United States (HTSUS), which encompasses other packing containers of paper or paperboard.

For the reasons set forth below, it is now our opinion that the compact disc box is correctly classified under subheading 4819.20.0040, HTSUS.

Facts:

In HQ 087690, a description of the merchandise reads as follows:

The goods at issue here are described as "compact disc boxes." They are thin, rectangular boxes designed to hold compact disc recorded media for transport and sale. The boxes measure approximately 12 ¼ inches in length, 6 inches in width, and ½ inch in thickness. They are made from a single sheet of paperboard, folded lengthwise such that a portion of paperboard forms an inner partition or filler on the inside of the box. The box is assembled by gluing the folded sheet in three locations on two internal surfaces. A square plastic case containing the recorded media is inserted into one end of the box. The folded inner partition fills the remaining volume of the box, keeping the plastic case/compact disc stationary. The ends are then sealed by means of glue. It is our understanding that the length of the box (twice the length of the plastic disc case) is for display purposes. The plastic disc cases have inserts which provide information about the recording. After the disc has been purchased and transported home, the paperboard box is discarded.

Issue:

What is the correct classification of the compact disc box?

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.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN), which are not legally binding, but are recognized as the official interpretation of the Harmonized System at the international level. It is Customs practice to follow, whenever possible, the terms of the EN when interpreting the HTSUS.

Heading 4819 encompasses:

Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays, and similar articles, of paper or paperboard of a kind used in offices, shops or the like.

The EN to the first part of the heading (before the semicolon) covering "Cartons, boxes, cases and other packing containers" reads:

This group covers containers of various kinds and sizes generally used for the packing, transport, storage or sale of merchandise, whether or not also having a decorative value. The heading includes cartons, boxes, cases, bags, cones, packets, casks, paperboard drums (containers), whether manufactured by rolling or by any other method, and whether or not fitted with reinforcing circular bands of other materials, tubular containers for posting documents, protective garment bags, jars, pots and the like (e.g., for milk or cream), whether or not waxed. The heading also covers special purpose paper bags such as bags for vacuum cleaners, bags for travel sickness, and record boxes and sleeves.

The EN to heading 4819 states that folding cartons, boxes and cases are:

cartons, boxes and cases in the flat in one piece, for assembly by folding and slotting (e.g., cake boxes);

and

containers assembled or intended to be assembled by means of glue, staples, etc., on one side only, the construction of the container itself providing the means of forming the other sides, although, where appropriate, additional means of fastening, such as adhesive tape or staples may be used to secure the bottom or lid. Emphasis supplied.

In HQ 087690, counsel argued that only one line of glue was attributable to the construction of the box, the remainder being applied to the inner partition. Therefore, counsel argued that the box was akin to a box with a glued insert, rather than a box glued on more than one side and was, therefore, classifiable under subheading 4811.20, HTSUS.

In rejecting counsel's argument, we found that the additional gluing on the folded paperboard sheet on the interior surfaces of the box exceeded the permissible use of glue for folding cartons. We further found that the box was not "a box-with-adjuncts" but rather the partition was "an integral part of the box's structure, particularly in light of the folded, single sheet construction * * *."

In several recent rulings, Customs held that there is no limiting language in the tariff provision or legal notes to preclude classification in subheading 4811.20, HTSUS, where the folding carton has a complex construction (HQ 965873, dated December 9, 2002), or when assembled, it has compartments (HQ 963903, dated July 27, 2001).

In the instant case, the box is glued on one side only. The fact that it has inserts that are glued into the interior of the box does not preclude classification in subheading 4811.20, HTSUS. Accordingly, we find that the compact disc box is the type of merchandise covered by the first part of heading 4819, and more specifically, as a folding carton in subheading 4819.20.0040, HTSUS.

 Holding:

The compact disc box is classifiable under subheading 4819.20.0040, HTSUS, which provides for "Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like: Folding cartons,

boxes and cases, of non-corrugated paper or paperboard, Other.” It is dutiable at the general column one rate at 0.6 percent *ad valorem*.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CARRYING CASES FOR NOTEBOOK COMPUTERS

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

ACTION: Notice of modification of ruling letter and revocation of treatment relating to tariff classification of carrying cases for notebook computers.

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 carrying cases for notebook computers under the Harmonized Tariff Schedule of the United States (“HTSUS”), and is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on January 22, 2003. Two 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 May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Gerry O’Brien, General Classification Branch, (202) 572-8780.

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

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

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), a notice was published in the CUSTOMS BULLETIN on January 22, 2003, proposing to revoke NY 872117, dated March 13, 1991, which involved the classification of carrying cases for notebook computers. Two comments were received in response to the notice.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, 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 modifying NY 872117 and any other ruling not specifically identified in order to reflect the proper classification of the carrying cases for notebook computers pursuant to the analysis set forth in HQ 966107, attached. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

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

Dated: March 4, 2003.

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

[Attachment]

[ATTACHMENT]

U.S. CUSTOMS SERVICE,
 Washington, DC, March 4, 2003.
 CLA-2 RR:CR:GC 966107 GOB
 Category: Classification
 Tariff No. 4202.12.80

DENNIS HECK
 CASTELAZO & ASSOCIATES
 5420 West 104th Street
 Los Angeles, CA 90045

Re: Modification of NY 872117; Carrying Case for Notebook Computer.

DEAR MR. HECK:

This letter is with respect to NY 872117 dated March 13, 1991, issued to you on behalf of Epson America Inc. We have reviewed that ruling and have determined that one of the classifications therein 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 modification of NY H872117, as described below, was published in the CUSTOMS BULLETIN on January 22, 2003.

Two comments were received in response to the notice. They are discussed in the LAW AND ANALYSIS section of this ruling.

Facts:

In NY 872117 the subject goods were described as follows:

The merchandise under consideration involves three models of notebook computers that incorporate a 80386 microprocessor, 2MB of RAM, an internal 3.5 inch 1.44MB floppy disk drive, an integrated keyboard, and a LCD flat panel display. The computer is imported and marketed with a nylon carrying case, and also includes a detachable power cord, two Ni-Cad batteries, one AC/DC adapter, and one software diskette. Epson notebook computer model EO400 is the NB-SL/20 monochrome LCD 20 MHZ version. Model EO401 is the NB-SL/25 monochrome LCD 25 MHZ version. Model EO402 is the NB-SL/25C active matrix color LCD 25 MHZ version. The unit, with one hard disk drive and one battery weighs 6.5 pounds. The keyboard, flat panel display and processor portion are in one common housing.

The nylon carrying case is padded on the inside with two MM polyethylene foam [sic], and includes inside pockets of PVC for holding several software diskettes and thin manuals. The case has a sturdy carrying handle and a zippered closure on three sides.

With respect to the carrying case, Customs stated:

The case is specially fitted to contain the notebook computer, and is suitable for long-term use. It thus appears to meet the GRI-5(a) provision and would thus be classified at the same rate as the computer.

Based upon GRI 5(a), Customs classified the carrying cases with the notebook computers in subheading 8471.20.00, HTSUS (1991 HTSUS), as: "Automatic data processing machines and units thereof * * *; Digital automatic data processing machines * * *"

We now believe that the classification of the carrying cases in subheading 8471.20.00, HTSUS, was incorrect. This ruling sets forth the correct classification.

Issue:

What is the classification under the HTSUS of the nylon carrying case?

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 interna-

tional 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.

GRI 5(a) provides as follows:

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

The Explanatory Note for Rule 5(a) provides as follows:

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

The HTSUS provisions (2003 HTSUS) under consideration are as follows:

4202	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers
4202.11.00	With outer surface of leather, of composition leather, or of patent leather
4202.12	With outer surface of plastics or of textile materials:
4202.12.80	Other
* * * * *	
8471	Automatic data processing machines and units thereof * * *:
8471.30.00	Portable digital automatic data processing machines, weighing not more than 10 kg, consisting of at least a central processing unit, a keyboard and a display

Two comments were received in response to the notice. The first commenter states that it would agree with the proposed modification if Customs would continue to classify the notebook computer carrying cases in heading 8471, HTSUS, had sufficient evidence on the requirement of GRI 5(a) been provided to Customs. The same commenter states that it disagrees with the proposal if it is Customs' intention never to classify notebook computer carrying cases under heading 8471, HTSUS, pursuant to GRI 5(a). The second commenter claims that the notebook computer carrying cases meet all of the requirements of GRI 5(a). It cites HQ 964149 dated February 11, 2002, which involved the classification of a textile container for a portable video player.

The comments have not persuaded us to amend our proposal. With respect to the first comment, we note that this ruling applies to the specific goods at issue. The second commenter cited HQ 964149, which we believe to be clearly distinguishable from the case here. We subjected the article in HQ 964149, a textile container for a portable video player, to the requirements of GRI 5(a) and concluded that it clearly met those requirements. We do not find likewise here.

After careful consideration, we believe GRI 5(a) requires a clear finding that the container at issue meets the EN criteria set forth above. We have no evidence that the carrying case at issue is of a class or kind of goods normally sold with laptop or notebook computers (adp units). EN I (4) to GRI 5(a). Accordingly, we no longer believe that this case is a GRI 5(a) container classified with the good with which it is entered.

We find that the subject nylon carrying cases are described in heading 4202, HTSUS, as briefcases and/or attache cases or similar containers. They are classified in subheading 4202.12.80, HTSUS, as: "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers * * *: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surface of plastics or textile materials: With outer surface of textile materials: Other."

Holding:

The nylon carrying cases are classified in subheading 4202.12.80, HTSUS, as: "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers * * *: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surface of plastics or textile materials: With outer surface of textile materials: Other."

Effect on Other Rulings:

NY 872117 is modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

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