

# Bureau of Customs and Border Protection

## *CBP Decisions*

(CBP Dec. 06-04)

### FOREIGN CURRENCIES

#### VARIANCES FROM QUARTERLY RATES FOR JANUARY, 2006

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 CBP Decision 06-02 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 2, 2006  
January 16, 2006

Brazil real

January 27, 2006 .....	0.453618
January 28, 2006 .....	0.453618
January 29, 2006 .....	0.453618
January 30, 2006 .....	0.453001
January 31, 2006 .....	0.452612

Dated: February 1, 2006

MARGARET T. BLOM,  
*Acting Chief,*  
*Customs Information Exchange.*

(CBP Dec. 06-05)

### FOREIGN CURRENCIES

#### DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR JANUARY, 2006

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 be-

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly  
list for January 2006 (continued):

low. 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 2, 2006  
January 16, 2006

European Union euro:

January 1, 2006 .....	1.184200
January 2, 2006 .....	1.184200
January 3, 2006 .....	1.198000
January 4, 2006 .....	1.209100
January 5, 2006 .....	1.210100
January 6, 2006 .....	1.214800
January 7, 2006 .....	1.214800
January 8, 2006 .....	1.214800
January 9, 2006 .....	1.206400
January 10, 2006 .....	1.206300
January 11, 2006 .....	1.213500
January 12, 2006 .....	1.203500
January 13, 2006 .....	1.210300
January 14, 2006 .....	1.210300
January 15, 2006 .....	1.210300
January 16, 2006 .....	1.210300
January 17, 2006 .....	1.207300
January 18, 2006 .....	1.208300
January 19, 2006 .....	1.211000
January 20, 2006 .....	1.210100
January 21, 2006 .....	1.210100
January 22, 2006 .....	1.210100
January 23, 2006 .....	1.227600
January 24, 2006 .....	1.228700
January 25, 2006 .....	1.225200
January 26, 2006 .....	1.222900
January 27, 2006 .....	1.213000
January 28, 2006 .....	1.213000
January 29, 2006 .....	1.213000
January 30, 2006 .....	1.209100
January 31, 2006 .....	1.215800

South Korea won:

January 1, 2006 .....	0.000990
January 2, 2006 .....	0.000990
January 3, 2006 .....	0.000997
January 4, 2006 .....	0.001002
January 5, 2006 .....	0.001006
January 6, 2006 .....	0.001011
January 7, 2006 .....	0.001011
January 8, 2006 .....	0.001011
January 9, 2006 .....	0.001023
January 10, 2006 .....	0.001019

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly  
list for January 2006 (continued):

South Korea won: (continued):

January 11, 2006 .....	0.001023
January 12, 2006 .....	0.001027
January 13, 2006 .....	0.001013
January 14, 2006 .....	0.001013
January 15, 2006 .....	0.001013
January 16, 2006 .....	0.001013
January 17, 2006 .....	0.001011
January 18, 2006 .....	0.001008
January 19, 2006 .....	0.001015
January 20, 2006 .....	0.001014
January 21, 2006 .....	0.001014
January 22, 2006 .....	0.001014
January 23, 2006 .....	0.001019
January 24, 2006 .....	0.001025
January 25, 2006 .....	0.001033
January 26, 2006 .....	0.001032
January 27, 2006 .....	0.001030
January 28, 2006 .....	0.001030
January 29, 2006 .....	0.001030
January 30, 2006 .....	0.001030
January 31, 2006 .....	0.001043

Taiwan N.T. dollar:

January 1, 2006 .....	0.030488
January 2, 2006 .....	0.030488
January 3, 2006 .....	0.030684
January 4, 2006 .....	0.030969
January 5, 2006 .....	0.031289
January 6, 2006 .....	0.031104
January 7, 2006 .....	0.031104
January 8, 2006 .....	0.031104
January 9, 2006 .....	0.031348
January 10, 2006 .....	0.031270
January 11, 2006 .....	0.031182
January 12, 2006 .....	0.031417
January 13, 2006 .....	0.031309
January 14, 2006 .....	0.031309
January 15, 2006 .....	0.031309
January 16, 2006 .....	0.031309
January 17, 2006 .....	0.031299
January 18, 2006 .....	0.031133
January 19, 2006 .....	0.031124
January 20, 2006 .....	0.031153
January 21, 2006 .....	0.031153
January 22, 2006 .....	0.031153
January 23, 2006 .....	0.031309
January 24, 2006 .....	0.031309
January 25, 2006 .....	0.031279
January 26, 2006 .....	0.031289
January 27, 2006 .....	0.031309
January 28, 2006 .....	0.031309

FOREIGN CURRENCIES—Daily rates for Countries not on quarterly list for January 2006 (continued):

Taiwan N.T. dollar: (continued):

January 29, 2006 .....	0.031309
January 30, 2006 .....	0.031279
January 31, 2006 .....	0.031279

Dated: February 1, 2006

MARGARET T. BLOM,  
*Acting Chief,*  
*Customs Information Exchange.*

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.

*Washington, DC, March 1, 2006*

The following documents of the Bureau of Customs and Border Protection (“CBP”), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,  
*Acting Assistant Commissioner,  
Office of Regulations and Rulings.*

---

**19 CFR PART 177**

**PROPOSED MODIFICATION OF RULING LETTERS AND  
TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF HYPERD® CHROMOTOGRAPHY  
SORBENTS**

**AGENCY:** Bureau of Customs and Border Protection, Department of Homeland Security

**ACTION:** Notice of proposed modification of a tariff classification ruling letter and treatment relating to the classification of HyperD® chromatography sorbents.

**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 and Border Protection (“CBP”) intends to revoke two rulings concerning the tariff classification of HyperD® chromatography sorbents, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATE:** Comments must be received on or before April 14, 2006.

**ADDRESS:** Written comments are to be addressed to Bureau of Customs and Border Protection, Office of Regulation and Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submit-

ted may be inspected at 799 9th St. N.W. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Allyson Mattanah, Tariff Classification and Marking Branch, (202) 572-8784.

**SUPPLEMENTARY INFORMATION:**

**Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP intends to revoke two rulings pertaining to the tariff classification of HyperD® chromatography sorbents.

Although in this notice CBP is specifically referring to Headquarters Ruling Letters (HQ) 962429, dated October 13, 1999, and New York Ruling Letter (NY) D84807, dated December 9, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP 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, CBP intends to revoke any treatment previously accorded by CBP 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, CBP personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or CBP previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In HQ 962429 and in NY D84807, we presumed the products were reagents of heading 3822, HTSUS, and only discussed classification at the eight digit level. We now believe that the instant products are not reagents at all. A reagent is a chemical agent for use in a chemical reaction. Typically, a reagent is mixed with another chemical, reacts with it, and is consumed in that reaction, creating a different set of chemicals. Separation media are not involved in such a reaction. Although separation media may contribute to the analysis of other substances by separating them into their constituent parts, there is no chemical reaction that consumes the reagent. Rather, the separation media simply attract certain ions through adsorption, separating them from the original molecule without chemically reacting with them. While the ENs specifically include a seemingly broad spectrum of reagents, including "other analytical reagents used for purposes other than detection or diagnosis," separation media cannot be considered a reagent, analytical or otherwise as explained above.

CBP, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke HQ 962429 and NY D84807, set forth as Attachments "A" and "B" respectively, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis in proposed HQs 967094 and 967095, set forth respectively as Attachments "C" and "D" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

**Dated:** February 27, 2006

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

Attachments

## [ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 962429  
OCTOBER 13, 1999  
CLA-2 RR:CR:GC 962429 MGM  
CATEGORY: Classification  
TARIFF NO.: 3822.00.5090

MR. ARNAUD SCHMUTZ  
BIOSEPR A INC.  
*111 Locke Drive*  
*Marlborough, MA 01752*

RE: "ProteinA Ceramic HyperD F," "ProteinA Ceramic HyperD 20 $\frac{1}{4}$ m" and  
"Protein A Hyper D" Chromatography Media; NY 890709

DEAR MR. SCHMUTZ:

This is in response to your letter of August 19, 1998, to the Customs National Commodity Specialist Division in New York, requesting a binding ruling, under the Harmonized Tariff Schedule of the United States (HTSUS), for "ProteinA Ceramic HyperD F" and "ProteinA Ceramic HyperD 20 $\frac{1}{4}$ m" chromatography media. Your letter was referred to this office for reply. We regret the delay.

New York Ruling Letter (NY) 890709, issued to Sepracor Inc., your predecessor in interest, on November 29, 1993, classified a similar product, "Protein A HyperD" chromatography medium, in subheading 3822.00.1090, HTSUS, which provides for "[d]iagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006: [c]ontaining antigens or antisera:[o]ther."

Upon further consideration of this matter, we have concluded that the correct classification of Protein A based chromatography media is under subheading 3822.00.5090, HTSUS, which provides for "[d]iagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006: [o]ther: [o]ther."

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), notice of the proposed revocation of NY 890709 was published on September 8, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 35/36. No comments were received in response to that notice.

FACTS:

"Protein A HyperD" chromatography medium consists of polystyrene beads bound to a number of Protein A ligands. "ProteinA Ceramic HyperD F" and "ProteinA Ceramic HyperD 20 $\frac{1}{4}$ m" differ from "Protein A HyperD" in that the bead substrate is a composite material of mineral ceramic and copolymer rather than polystyrene. Protein A ligands bind selectively to immunoglobulin G such that protein A based chromatography media are useful in column separation processes.



Immunoglobulin G is an antibody which is produced as part of the body's immune response to the presence of certain foreign bodies called antigens (antibody generators). Immunoglobulin G binds to the antibody thereby identifying it as a target for immunological attack. Immunoglobulin G is also capable of binding to protein A. However, it does not bind to protein A in the same manner as it would bind to an antigen. It is the crystallizable fragment (Fc) portion of immunoglobulin G which binds to protein A, while the antigen-binding fragments (Fab) of immunoglobulin G bind with compatible antigens. Protein A does not stimulate the immune response.

**ISSUE:**

Is protein A an antigen such that protein A based chromatography media are diagnostic or laboratory reagents containing antigens of subheading 3822.00.10, HTSUS?

**LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. See, T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

In NY 890709 "Protein A HyperD" chromatography medium was classified in subheading 3822.00.10, HTSUS, as a diagnostic or laboratory reagent containing antigens. An antigen is "any substance which is capable, under appropriate conditions, of inducing a specific immune response and of reacting with the products of that response." *Dorland's Medical Dictionary*, 27th ed., 1988. Protein A is somewhat similar to an antigen in that it binds to an antibody, immunoglobulin G, however it does not induce an immune response and does not bind to the antigen-binding fragments of immunoglobulin G. Thus, protein A is not an antigen.

**HOLDING:**

Protein A based chromatography media, including "ProteinA Ceramic HyperD F" "ProteinA Ceramic HyperD 20I¼m" and "Protein A Hyper D" chromatography media are classified in subheading 3822.00.5090, HTSUS, as diagnostic or laboratory reagents not containing antigens or antisera.

NY 890709 is revoked. In accordance with 19 U. S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN DURANT,  
*Director,*  
*Commercial Rulings Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY D84807  
December 9, 1998  
CLA-2-38:RR:NC:2:238 D84807  
CATEGORY: Classification  
TARIFF NO.: 3822.00.5090

MR. ARNAUD SCHMUTZ  
PROJECT MANAGER BIOSEPPRA INC.  
*111 Locke Drive*  
*Marlborough, MA 01752*

RE: The tariff classification of Heparin HyperD 20 m, Heparin HyperD M, Blue Ceramic HyperD, Lysine Ceramic HyperD, and Methyl Ceramic HyperD chromatographic media, in bulk form, from France

DEAR MR. SCHMUTZ:

In your letter dated August 19, 1998, you requested a tariff classification ruling. Technical information was submitted. We apologize for the delay in our response.

Heparin HyperD 20 m (Part #200750), Heparin HyperD M (Part #200290), Blue Ceramic HyperD (Part #200310), and Lysine Ceramic HyperD (Part #200590) are characterized as affinity chromatographic media, while Methyl Ceramic HyperD (Part #200510) is a hydrophobic interaction chromatographic (HIC) medium. All are in bulk form.

According to the technical information you submitted, Ceramic HyperD media are a range of chromatographic sorbents used for the purification and preparation of protein substances in the laboratory or in industry, the final destination being related to the particle size and particle size distribution (small particles are used at laboratory scale, large particles for high productivity at industrial scale). They are designed for separation in aqueous solutions.

In general, Ceramic HyperD media are composite materials in bead form consisting of a co-polymeric crosslinked network (hydrogel) distributed inside the pores of a rigid, mineral (mixture of sintered zirconium and calcium silicates) "ceramic" support (substrate). The substrate acts as a solid skeleton, while the hydrogel polymer governs the exchange mechanism for macromolecule or particle adsorption. The polymer provides a tridimensional network for the capture of separated molecules. It is insoluble in any solvent, thus preventing the loss of any captured molecules. Affinity ligands

are chemically attached to the hydrogel polymers at one end, leaving the other end free to react with the targeted substance to form a complex or coordination compound with that substance. The presence of specific ligands induces, at given pH and ionic strength conditions, a selective adsorption, through the bead-hydrogel structure carrying the ligand, of molecules such as proteins. The adsorbed proteins can then be selectively eluted at precise conditions designed for affinity separation.

Heparin HyperD 20 m and Heparin HyperD M utilize a heparin ligand which specifically interacts with biological products that bind to heparin, such as coagulating factors, growth factors, lipoproteins, etc. These products appear to be particularly efficacious in the purification and production of Antithrombin III. Blue Ceramic HyperD utilizes a Basilen Blue dye as the ligand. This dye bears a specific site that mimics bilirubin and, therefore, binds to albumin. Lysine Ceramic HyperD has an amino acid ligand (lysine). Generally, amino acid chemistry media are utilized in production of serum proteins, peptides, enzymes, etc.

The Methyl Ceramic HyperD is a medium filled with hydrophobic (-CH<sub>3</sub>) functionalized hydrogel. This product has broad application in the purification of proteins.

The applicable subheading for the Heparin HyperD 20 m, Heparin HyperD M, Blue Ceramic HyperD, Lysine Ceramic HyperD, and Methyl Ceramic HyperD will be 3822.00.5090, Harmonized Tariff Schedule of the United States (HTS), which provides for “[d]iagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006: [o]ther: [o]ther.” The rate of duty will be 1 percent ad valorem. This merchandise may be subject to the requirements of the Federal Food, Drug, and Cosmetic Act, which is administered by the U.S. Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (301)443-6553.

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 Harvey Kuperstein at 212-466-5770.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967094  
CLA-2 RR:CTF: TCM 967094AM  
**CATEGORY:** CLASSIFICATION  
**TARIFF NO.:** 3906.90.50

MR. ARNAUD SCHMUTZ  
BIOSEPR A INC.  
111 Locke Drive  
Marlborough, MA 01752

**RE:** HQ 962429; Protein A HyperD, Protein A HyperD 20  $\mu$ m and Protein A Ceramic HyperD F chromatography media

DEAR MR. SCHMUTZ:

This is in reference to Headquarters Ruling Letter (HQ) 962429, dated October 13, 1999, regarding the classification of Protein A HyperD, Protein A HyperD 20  $\mu$ m and Protein A Ceramic HyperD F chromatography media, pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). In HQ 962429, we revoked New York ruling Letter (NY) 890709, dated October 13, 1999, which classified the merchandise in subheading 3822.00.10, as a reagent containing antigens, and classified the merchandise in subheading 3822.00.5090, HTSUS is a reagent not containing antigens. We have reviewed the ruling and find it to be incorrect in that the merchandise is not a reagent. We propose to revoke it.

**FACTS:**

In HQ 962429, we described the products thus:

'Protein A HyperD' chromatography medium consists of polystyrene beads bound to a number of Protein A ligands. 'ProteinA Ceramic HyperD F' and 'ProteinA Ceramic HyperD 20  $\mu$ m' differ from 'Protein A HyperD' in that the bead substrate is a composite material of mineral ceramic and copolymer rather than polystyrene. Protein A ligands bind selectively to immunoglobulin G such that protein A based chromatography media are useful in column separation processes.

The importer's technical information states:

Ceramic HyperD affinity media are composite materials in bead form constituted of a co-polymeric crosslinked network distributed inside the pores of mineral ceramic composite particles. . . .

Mineral ceramic composite material acts as a solid skeleton, while polymer moiety governs the exchange mechanism for macromolecule or particle adsorption. Mineral moiety is a mixture of sintered zirconium and calcium silicates obtained at very high temperature. The mineral surface is totally covered by a layer of organic polymer to prevent any non-specific adsorption.

The hydrogel copolymer—carrying adsorption sites—is constructed by an *in situ* radical co-polymerization in association with cross-linking agents. The role of a crosslinker is to provide a tridimensional network

insoluble in any solvent thus preventing any possible leakage of polymeric chains when in use. Affinity ligands are chemically attached onto the hydrogel. . . .

**ISSUE:**

Are chromatography sorbents “analytical reagents” of heading 3822, HTSUS, or are they classified as to their essential character as “acrylic polymers” in heading 3906, HTSUS?

**LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

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

The HTSUS provisions under consideration are as follows:

3822 Diagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials:

Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006:

3822.00.50 Other  
\* \* \* \* \*

3906 Acrylic polymers in primary forms:

3906.90 Other

Other

3906.90.5000 Other

EN 38.22 states, in pertinent part, the following:

This heading covers diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents, other than diagnostic reagents

of heading 30.02 or diagnostic reagents designed to be administered to the patient and blood grouping reagents of heading 30.06. . . . Prepared laboratory reagents include not only diagnostic reagents, but also other analytical reagents used for purposes other than detection or diagnosis. Prepared diagnostic and laboratory reagents may be used in medical, veterinary, scientific or industrial laboratories, in hospitals, in industry, in the field or, in some cases, in the home.

In HQ 962429, we classified these substances as analytical reagents under GRI 1. We now believe this is incorrect. A reagent is “a substance employed as a test to determine the presence of some other substance by means of the *reaction* which is produced. Now, any substance employed in chemical reactions.” *The Compact Oxford English Dictionary*, Second Edition ( p. 271, 1991). Such substances are also called reactants. A reactant is defined as “a substance that is consumed in the course of a chemical reaction. It is sometimes known, especially in the older literature, as a reagent, but this term is better used in a more specialized sense as a test substance that is added to a system in order to bring about a reaction or to see whether a reaction occurs (e.g. an analytical reagent).” *Compendium of Chemical Terminology, IUPAC Recommendations*, Second Edition. (p. 342, 1997).

Typically, a reagent is mixed with another chemical, reacts with it, and is consumed in that reaction, creating a different set of chemicals. For instance, silver nitrate is a reagent used for the detection of certain halide ions (chloride, iodide, bromide), particularly for chloride. When clear silver nitrate and sodium chloride solutions are combined, the silver and chloride ions react with one another to form a silver chloride solid precipitate and a solution of sodium nitrate. Hence, the addition of silver nitrate to a clear sodium chloride solution allows one to detect the presence of chloride in the solution, because the white silver chloride precipitate could not have formed without its presence.

Separation media are not involved in such a reaction. Although separation media may contribute to the analysis of mixtures by separating them into their constituent parts, there is no chemical reaction that consumes the “reagent.” Rather, the instant sorbents are used in “adsorption chromatography,” the “separation of a chemical mixture (gas or liquid) by passing it over an adsorbent bed which adsorbs different compounds at different rates.” “Adsorption” is defined as “the surface retention of solid, liquid, or gas molecules, atoms, or ions by a solid or liquid . . . .” *McGraw-Hill Dictionary of Scientific and Technical Terms, Fifth Ed.*, Parker, Sybil P., ed. (1994, p. 38). While the ENs specifically include a seemingly broad spectrum of reagents, including “other analytical reagents used for purposes other than detection or diagnosis,” separation media cannot be considered a reagent, analytical or otherwise, as explained above.

The HQ ruling recognizes that the substances are composite goods, yet fails to proceed to GRI 3 in classifying the substances. Cross-linked polymeric hydrogel is classifiable in heading 3906, HTSUS, as an “acrylic polymer,” and the porous ceramic substrate of zirconia and calcium silicates is classifiable elsewhere.

The hydrogel completely encloses the substrate. Therefore, the nature of each sorbent product only depends upon the composition of the hydrogel and is not affected by any potential chromatographic activity of the substrate. The hydrogel contains the ligand that captures the intended molecule whereas the porous mineral ceramic particles act as a rigid skeleton that

improves the functioning of these products as chromatography media. Hence, under GRI 3(b), the essential character of the separation media is imparted by the hydrogel. This means that for Protein A HyperD, Protein A HyperD 20 µm and Protein A Ceramic HyperD F chromatography media, only heading 3906, HTSUS, the provision for "acrylic polymer" describes the material that gives the product its essential character.

**HOLDING:**

By application of GRI 3(b), Protein A HyperD, Protein A HyperD 20 µm and Protein A Ceramic HyperD F chromatography media, in bulk form, are classified in subheading 3906.90.50, HTSUS, the provision for "Acrylic polymers in primary forms: Other: Other: Other." The duty rate is 4.2% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

HQ 962429 is revoked.

MYLES B. HARMON,

*Director,*

*Commercial and Trade Facilitation Division.*

cc: Frank Cantone, Harvey Kuperstein  
NCSA

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967095

CLA-2 RR: CTF:TCM 967095AM

**CATEGORY:** CLASSIFICATION

**TARIFF NO.:** 3822.00.50, 3914.00.60

MR. ARNAUD SCHMUTZ  
BIOSEPPA INC.  
111 Locke Drive  
Marlborough, MA 01752

**RE:** New York Ruling Letter D84807; Heparin HyperD® 20µm, Heparin HyperD® M, Blue Ceramic HyperD®, Lysine Ceramic HyperD® and Methyl Ceramic HyperD® chromatographic media, in bulk form, from France.

DEAR PORT DIRECTOR:

This is in reference to New York Ruling Letter (NY) D84807, dated December 9, 1998, regarding the classification of Heparin HyperD® 20µm, Heparin HyperD® M, Blue Ceramic HyperD®, Lysine Ceramic HyperD® and Methyl Ceramic HyperD® chromatographic media, in bulk form, from

France, pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed the ruling and find it to be incorrect. We propose to revoke it.

**FACTS:**

In NY D84807, we described the products thus:

Heparin HyperD 20 m (Part #200750), Heparin HyperD M (Part #200290), Blue Ceramic HyperD (Part #200310), and Lysine Ceramic HyperD (Part #200590) are characterized as affinity chromatographic media, while Methyl Ceramic HyperD (Part #200510) is a hydrophobic interaction chromatographic (HIC) medium. All are in bulk form.

According to the technical information you submitted, Ceramic HyperD media are a range of chromatographic sorbents used for the purification and preparation of protein substances in the laboratory or in industry, the final destination being related to the particle size and particle size distribution (small particles are used at laboratory scale, large particles for high productivity at industrial scale). They are designed for separation in aqueous solutions.

In general, Ceramic HyperD media are composite materials in bead form consisting of a co-polymeric crosslinked network (hydrogel) distributed inside the pores of a rigid, mineral (mixture of sintered zirconium and calcium silicates) "ceramic" support (substrate). The substrate acts as a solid skeleton, while the hydrogel polymer governs the exchange mechanism for macromolecule or particle adsorption. The polymer provides a tridimensional network for the capture of separated molecules. It is insoluble in any solvent, thus preventing the loss of any captured molecules. Affinity ligands are chemically attached to the hydrogel polymers at one end, leaving the other end free to react with the targeted substance to form a complex or coordination compound with that substance. The presence of specific ligands induces, at given pH and ionic strength conditions, a selective adsorption, through the bead-hydrogel structure carrying the ligand, of molecules such as proteins. The adsorbed proteins can then be selectively eluted at precise conditions designed for affinity separation.

Heparin HyperD 20 m and Heparin HyperD M utilize a heparin ligand which specifically interacts with biological products that bind to heparin, such as coagulating factors, growth factors, lipoproteins, etc. These products appear to be particularly efficacious in the purification and production of Antithrombin III. Blue Ceramic HyperD utilizes a Basilen Blue dye as the ligand. This dye bears a specific site that mimics bilirubin and, therefore, binds to albumin. Lysine Ceramic HyperD has an amino acid ligand (lysine). Generally, amino acid chemistry media are utilized in production of serum proteins, peptides, enzymes, etc.

The Methyl Ceramic HyperD is a medium filled with hydrophobic (-CH<sub>3</sub>) functionalized hydrogel. This product has broad application in the purification of proteins.

We classified the merchandise in subheading 3822.00.5090, HTSUS, which provides for "[d]iagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents whether or not on a backing, other than those of heading 3002 or 3006: [o]ther: [o]ther."



**ISSUE:**

Are chromatography sorbents “analytical reagents” of heading 3822, HTSUS, or are they classified as to their essential character as “acrylic polymers” in heading 3906, HTSUS.

**LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the sub-headings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs.

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

The HTSUS provisions under consideration are as follows:

3822	Diagnostic or laboratory reagents on a backing and prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006; certified reference materials:
	Diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents, whether or not on a backing, other than those of heading 3002 or 3006:
3822.00.50	Other
* * *	* *
3906	Acrylic polymers in primary forms:
3906.90	Other
	Other
3906.90.5000	Other

EN 38.22 states, in pertinent part, the following:

This heading covers diagnostic or laboratory reagents on a backing, prepared diagnostic or laboratory reagents, other than diagnostic reagents of heading 30.02 or diagnostic reagents designed to be administered to the patient and blood grouping reagents of heading 30.06. . . . Prepared laboratory reagents include not only diagnostic reagents, but also other analytical reagents used for purposes other than detection or diagnosis.

Prepared diagnostic and laboratory reagents may be used in medical, veterinary, scientific or industrial laboratories, in hospitals, in industry, in the field or, in some cases, in the home.

In NY D84807, we classified the subject merchandise as analytical reagents under GRI 1. We now believe this is incorrect. A reagent is “a substance employed as a test to determine the presence of some other substance by means of the *reaction* which is produced. Now, any substance employed in chemical reactions.” *The Compact Oxford English Dictionary*, Second Edition (p. 271, 1991). Such substances are also called reactants. A reactant is defined as “a substance that is consumed in the course of a chemical reaction. It is sometimes known, especially in the older literature, as a reagent, but this term is better used in a more specialized sense as a test substance that is added to a system in order to bring about a reaction or to see whether a reaction occurs (e.g. an analytical reagent).” *Compendium of Chemical Terminology, IUPAC Recommendations*, Second Edition. (p. 342, 1997).

Typically, a reagent is mixed with another chemical, reacts with it, and is consumed in that reaction, creating a different set of chemicals. For instance, silver nitrate is a reagent used for the detection of certain halide ions (chloride, iodide, bromide), particularly for chloride. When clear silver nitrate and sodium chloride solutions are combined, the silver and chloride ions react with one another to form a silver chloride solid precipitate and a solution of sodium nitrate. Hence, the addition of silver nitrate to a clear sodium chloride solution allows one to detect the presence of chloride in the solution, because the white silver chloride precipitate could not have formed without its presence.

Separation media are not involved in such a reaction. Although separation media may contribute to the analysis of mixtures by separating them into their constituent parts, there is no chemical reaction that consumes the “reagent.” Rather, the instant sorbents are used in “adsorption chromatography,” the “separation of a chemical mixture (gas or liquid) by passing it over an adsorbent bed which adsorbs different compounds at different rates.” “Adsorption” is defined as “the surface retention of solid, liquid, or gas molecules, atoms, or ions by a solid or liquid. . . .” *McGraw-Hill Dictionary of Scientific and Technical Terms, Fifth Ed.*, Parker, Sybil P., ed. (1994, p. 38). While the ENs specifically include a seemingly broad spectrum of reagents, including “other analytical reagents used for purposes other than detection or diagnosis,” separation media cannot be considered a reagent, analytical or otherwise, as explained above.

The NY ruling recognizes that the substances are composite goods, yet fails to proceed to GRI 3 in classifying the substances. Cross-linked polymeric hydrogel is classifiable in heading 3906, HTSUS, as an “acrylic polymer,” and the porous ceramic substrate of zirconia and calcium silicates is classifiable elsewhere.

The hydrogel completely encloses the substrate. Therefore, the nature of each sorbent product only depends upon the composition of the hydrogel and is not affected by any potential chromatographic activity of the substrate. The hydrogel contains the ligand that captures the intended molecule whereas the porous mineral ceramic particles act as a rigid skeleton that improves the functioning of these products as chromatography media. Hence, under GRI 3(b), the essential character of the separation media is imparted by the hydrogel. This means that for the non-ion exchangers, Methyl Ceramic HyperD®, Heparin HyperD® 20µm, Heparin HyperD® M,

Blue Ceramic HyperD®, Lysine Ceramic HyperD® chromatographic media, only heading 3906, HTSUS, the provision for “acrylic polymer” describes the material that gives the product its essential character.

Hence, Methyl Ceramic HyperD®, Heparin HyperD® 20µm, Heparin HyperD® M, Blue Ceramic HyperD®, and Lysine Ceramic HyperD® chromatographic media are all classified in subheading 3906.90.50, HTSUS, the provision for “Acrylic polymers in primary forms: Other: Other: Other.”

**HOLDING:**

By application of GRI 3(b), Methyl Ceramic HyperD®, Heparin HyperD® 20µm, Heparin HyperD® M, Blue Ceramic HyperD®, and Lysine Ceramic HyperD® chromatographic media are all classified in subheading 3906.90.50, HTSUS, the provision for “Acrylic polymers in primary forms: Other: Other: Other.” The duty rate is 4.2% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY D84807 is revoked.

MYLES B. HARMON,  
*Director,*

*Commercial and Trade Facilitation Division.*

cc: Frank Cantone, Harvey Kuperstein  
NCS D

**19 CFR PART 177**

**REVOCATION OF RULING LETTER AND TREATMENT  
RELATING TO CLASSIFICATION OF MICROWAVE  
POPCORN**

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

**ACTION:** Notice of revocation of ruling letter and revocation of treatment relating to the classification of microwave popcorn.

**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 and Border Protection (CBP) is revoking a ruling letter pertaining to the tariff classification of microwave popcorn and revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation was published in the Customs Bulletin of January 4, 2006, Vol. 40, No. 2. One comment was received.

**EFFECTIVE DATE:** Merchandise entered or withdrawn from warehouse for consumption on or after May 14, 2006.

**FOR FURTHER INFORMATION CONTACT:** Peter T. Lynch, Tariff Classification and Marking Branch, 202-572-8778.

**SUPPLEMENTARY INFORMATION:**

**Background**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published on January 4, 2006, in the *Customs Bulletin*, Volume 40, Number 2, proposing to revoke New York Ruling Letter (NY) H83710, dated July 16, 2001, pertaining to the tariff classification of microwave popcorn under the Harmonized Tariff Schedule of the United States (HTSUS). One comment was received in reply to the notice. The points raised in that comment have been addressed in the ruling.

In NY H83710, dated July 16, 2001, the classification of a product commonly referred to as microwave popcorn was determined to be in subheading 1005.90.4040, HTSUS, which provides for corn (maize), other, other, popcorn. Since the issuance of that ruling, CBP has had a chance to review the classification of this merchandise and has determined that the classification is in error. Because of the addition of other ingredients to the microwave corn, the product constitutes a preparation of corn kernels for popping and is properly classified in

subheading 2008.19.9090, HTSUS, which provides for, among other things, nuts and other seeds, otherwise prepared or preserved.

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

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in 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 this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY H83710, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967900 (*see* "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

**Dated:** February 27, 2006

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967900  
February 27, 2006  
CLA-2 RR:CTF:TCM 967900ptl  
CATEGORY: Classification  
TARIFF NO.: 2008.19.9090

MS. ANDREA MILLER  
COSTCO WHOLESALE  
999 Lake Drive  
Issaquah, WA 98027

RE: Microwave Buttered Popcorn; Revocation of NY H83710

DEAR MS. MILLER:

On July 16, 2001, the Customs and Border Protection (CBP) National Commodity Specialist Division, in New York, issued New York Ruling Letter (NY) H83710 to you classifying "Act II" brand microwave buttered popcorn under the Harmonized Tariff Schedule of the United States (HTSUS), in subheading 1005.90.4040, HTSUS, which provides for corn (maize), other, other, popcorn. CBP has had occasion to review that ruling and, for the reasons stated below, has determined that it is in error. This letter revokes NY H83710 and provides the correct classification for microwave buttered popcorn.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by Title VI, a notice was published in the January 4, 2006, CUSTOMS BULLETIN, Volume 40, Number 2, proposing to modify NY H83710, and to revoke any treatment accorded to substantially identical transactions. One comment was received in response to the notice. Points raised in that comment are discussed below.

**FACTS:**

The "Act II" brand popcorn products under consideration in NY H83710 are available in three flavors. "Butter" popcorn contains popcorn (maize), partially hydrogenated vegetable oil, salt, natural flavoring, and achiote (coloring). "Extra butter" popcorn contains popcorn (maize), partially hydrogenated vegetable oil, salt, natural and artificial flavoring, and achiote. "Natural" popcorn contains popcorn (maize), partially hydrogenated vegetable oil, and salt. The flavorings and seasonings are packaged together with the popcorn in individual 99 gram packages that are designed to be heated in a microwave. The individual packages will be sold in boxes containing 28 packages.

**ISSUE:**

Whether individual packages of popcorn mixed with other ingredients for use in microwave ovens are preparations for purposes of heading 2008?

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely

on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

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

The HTSUS subheadings under consideration are as follows:

<b>1005</b>	Corn (maize):
	* * *
1005.90	Other:
	* * *
1005.90.40	Other
1005.90.4040	Popcorn
<b>2008</b>	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:
	Nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together:
	* * *
2008.19	Other, including mixtures:
	* * *
	Other, including mixtures:
2008.90.90	Other
2008.19.9090	Other

As imported, the packages of microwave popcorn consist of kernels of corn (maize) that have been mixed with specific proportions of partially hydrogenated vegetable oil, salt, natural or artificial flavoring, and, in some, achote (coloring). These packages are marketed to consumers who will purchase and use the products as offered, without any further preparation on their part other than cooking in the microwave.

According to Note 1 (b) to Chapter 10, grains which have been hulled or otherwise worked are excluded from Chapter 10. Additionally, the General Explanatory Notes to Chapter 10 provide, in relevant part, that "This Chapter covers cereal grains only. . . ." Since the popcorn at issue has been prepared by being mixed with partially hydrogenated vegetable oil, salt, and other ingredients, they are excluded from Chapter 10 and they should not be classified in subheading 1005.90.4040, HTSUS.

It is CBP's opinion that the specific ingredient composition of these products has advanced the popcorn from being mixtures of popcorn kernels and other ingredients to products that are preparations consisting of popcorn

kernels with specific additional ingredients which are designed to impart a specific taste or flavor to the finished product.

CBP received a comment in response to the Notice of Proposed Revocation published in the *Customs Bulletin* which argues for the correctness of the original ruling. The commenter asserts that the products have been put up for the convenience of the consumer. He argues that the products should be classified by virtue of the essential character of the product, which, it is claimed to be imparted by the popcorn kernels. The commenter claims that the popcorn kernels have not been "prepared or preserved" but have simply "been packed with other ingredients."

In support of this position, the commenter refers to several CBP rulings. However, the cited rulings do not support his position. One ruling, NY H88884, dated March 6, 2002, classified tuna products packed with marinade in pouches. The commenter correctly points out that the product was classified in "the HTS Heading 1604 provisions covering fish." Chapter 16 covers prepared foodstuffs. The fish that has not been prepared is classified in chapter 3.

Similarly, other rulings cited cover pasta or noodles packaged with either a cheese sauce mix (NY K81125, dated November 19, 2003), tomato sauce and cheese (NY I84166, dated August 2, 2002), or a sauce preparation (NY G81337, dated September 13, 2000). In all these rulings, the products constituted "sets" in which the ingredients were packaged for use together, but were not mixed together as are the subject popcorn kernels and the oil, salt and flavorings inside the microwave package. In HQ 950891, dated March 26, 1992, CBP conducted a similar analysis classifying three varieties of rice soup meals as sets. Each variety consisted of three separate packets of rice, soup stock, and either an eel, mushroom or bamboo shoot packet. CBP held that the products were sets consisting of separate items put up together to meet a particular need, with the rice component imparting the essential character. Here, again, the ingredients were not mixed at importation, but were mixed by the consumer during final preparation.

For instances where CBP has ruled that, because of the mixing of ingredients and seasonings, a preparation has been created for tariff purposes, see HQ 953651, dated June 16, 1993, concerning jambalaya and curry preparations consisting of rice, spices and vegetables. Also, NY L80537, dated November 8, 2004, concerning mixtures of dry ingredients for soup packaged together in sealed pouches, and NY D80053, dated August 10, 1998, a dry lentil soup mix. Both of these rulings classified the products in chapter 21 as preparations, in spite of the fact that each "soup" contained a specific, identifiable ingredient that characterized that particular soup.

A further rationale supporting CBP's classification of packages of microwave popcorn as a preparation can be found in the opinions of the Court of International Trade and the U.S. Court of Appeals for the Federal Circuit. See *Orlando Food Corp. v. United States*, 21 Ct. Int'l Trade 187 (1997); aff'd 140 F.3d 1437 (Fed. Cir. 1998). In *Orlando Foods*, the addition of salt, citric acid and a basil leaf caused canned tomato products to be classified as goods that have the character of preparations for sauces, rather than tomatoes. In the instant situation, the addition of oil, salt and flavorings to the popcorn kernels has changed the character of the product to one that is more than kernels of popcorn. Also, the added ingredients distinguish the different styles from each other.



In the microwave popcorn, the popcorn kernels have been prepared for use by the consumer by having been combined and packaged with oil, salt and flavorings. Even if the kernels were to be removed before being popped, which is not how they are intended to be used, they would retain some of the oil, salt and flavorings. The instant popcorn kernels in the microwave packages are not the same popcorn kernels found in jars or plastic bags of popcorn.

Based on this analysis, we disagree with the commenter's proposition and conclude that the microwave popcorn packages are preparations provided for in heading 2008, HTSUS, which provides for "fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included."

**HOLDING:**

Microwave popcorn packages consisting of popcorn (maize), partially hydrogenated vegetable oil, natural and/or artificial flavor and, possibly, coloring, and salt, and designed for use with microwave ovens are classified in subheading 2008.19.9090, HTSUS, which provides for "Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included: Nuts, peanuts (ground-nuts) and other seeds, whether or not mixed together: Other, including mixtures: Other, including mixtures: Other, Other." The 2006 duty rate is 17.9% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

NY H83710, dated July 16, 2001, is revoked.

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

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

**19 CFR PART 177**

**MODIFICATION OF ONE RULING LETTER, REVOCATION  
OF TWO RULING LETTERS, AND REVOCATION OF  
TREATMENT RELATING U. S. CUSTOMS AND BORDER  
PROTECTION**

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

**ACTION:** Notice of modification of a tariff classification ruling letter, revocation of two tariff classification ruling letters, and revocation of treatment relating to the classification of certain braids in the piece.

**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 U.S. Customs and Border Protection (CBP) is modifying one ruling letter and revoking two ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain braids in the piece. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice proposing these actions and inviting comments on their correctness was published in the *Customs Bulletin*, Volume 40, Number 2, on January 4, 2006. 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 May 14, 2006.

**FOR FURTHER INFORMATION CONTACT:** Brian Barulich, Tariff Classification and Marking Branch, Commercial Trade and Facilitation Division, Office of Regulations and Rulings, at (202) 572-8883.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to modify New York Ruling Letter (NY) H87352, dated February 19, 2002, and to revoke NY J82797, dated April 10, 2003, and NY J82793, dated April 9, 2003, was published in the *Customs Bulletin*, Volume 40, Number 2, on January 4, 2006. No comments were received in response to this notice. As stated in the proposed notice, the modification and revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP 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, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY H87352, NY J82797, and J82793, CBP classified several articles of braided construction incorporating metallic strip in heading 5605, HTSUS, which provides for: "Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal." Based on our review of each ruling, the HTSUS, and the Explanatory Notes for Heading 5605 and Heading 5808, we now believe that these articles are properly classified in heading 5808, which provides for: "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY H87352 and revoking NY J82797 and NY J82793 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967828, HQ 967829, and HQ 967830, respectively, which are set forth as attachments to this notice. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

DATED: February 27, 2006

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

Attachments



[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967828  
FEBRUARY 27, 2006  
CLA-2 RR:CR:TE 967828 BtB  
CATEGORY: Classification  
TARIFF NO.: 5808.10.9000

MS. YOLANDA S. MASSEY  
IMPORT MANAGER  
*Michaels Stores, Inc.*  
*8000 Bent Branch Dr.*  
*Irving, Texas 75063*

Re: Classification of braid in the piece; NY J82797 revoked

DEAR MS. MASSEY:

On April 10, 2003, U.S. Customs and Border Protection (CBP) issued New York Ruling Letter (NY) J82797 to Michaels Stores, Inc. ("Michaels"). In NY J82797, CBP classified two articles identified as Vendor Style # MXT-12209, Sample A and Sample B, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Upon review of that ruling, we have found that the classifications provided for these articles are incorrect. This ruling, Headquarters Ruling Letter (HQ) 967828, hereby revokes NY J82797 and sets forth the correct classification of those samples.

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 J82797 was published in the *Customs Bulletin*, Volume 40, Number 2, on January 4, 2006. CBP received no comments during the notice and comment period that closed on February 3, 2006.

FACTS:

In NY J82797, Sample A and Sample B were described as follows:

Sample A is described as 100% polyester. It is composed of six gimped strands (a multifilament core wrapped by a strip) mixed with numerous strips. They are all braided together. It is flat and measures 1/8" across.

Sample B is a braided nylon core sheathed in braided textile strip. It measures 1/16" in diameter.

The strip in Sample A and Sample B is metallic. Both articles are made in Taiwan. In NY J82797, CBP classified Sample A and Sample B under sub-heading 5605.00.9000, HTSUSA, which provides for "Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal: Other."

ISSUE:

Whether Sample A and Sample B were properly classified in heading 5605, HTSUSA, as metalized yarns or are they classified as braid in the piece in heading 5808, HTSUSA.

LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes." If 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 order.

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

Heading 5605, HTSUSA, provides for "Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal." The ENs to heading 5605 state that, among other articles, the heading covers:

- (1) **Yarn consisting of any textile material (including monofilament, strip and the like and paper yarn) combined with metal thread or strip**, whether obtained by a process of twisting, cabling or by gimping, whatever the proportion of the metal present. . . .

Braided constructions are not provided for in the terms of heading 5605 or mentioned in the ENs to that heading.

Heading 5808, HTSUSA, however, does provide for braided constructions. In its entirety, the heading provides for: "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles." The ENs to heading 5808 state that the products classified in the heading, among other articles, include:

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

These are obtained by interlacing diagonally yarns, or the monofilament, strip and the like of Chapter 54.

\* \* \* \* \*

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

Varieties of braid include lacing (e.g., for boot or shoe laces), piping, soutache, ornamental cords, braided galloons, etc. Tubular braid may have a textile core.

Braid is used for edging or ornamenting certain articles of apparel (e.g., decorative trim and piping) or furnishing articles (e.g., tiebacks for curtains), as sheathing for electrical wiring, for the manufacture of certain shoes laces, anorak or track suit cords, cord belts for dressing gowns, etc.

The construction of Sample A or Sample B is not obtained by twisting, cabling or by gimping. Rather, both are of braided construction. The articles are not yarns, but braids in the piece. They are, therefore, classified pursuant to GRI 1, under heading 5808, HTSUSA, which specifically provides for such articles. Both samples are classified in subheading 5808.10, which provides for braids in the piece.

We note that while Sample A and Sample B may not be strictly decorative, they are not as tightly plaited and compact as the braided articles of heading 5607, HTSUSA, and are not suitable for the uses set forth for articles classified in that heading (as twine, cordage, ropes or cables). *See generally*, HQ 965230, dated June 3, 2002.

While a yarn that contains any amount of metal is regarded in its entirety as a "metalized yarn," a braid of heading 5808, HTSUSA, that contains any amount of metal is not regarded in its entirety as being of metalized yarn. The metallic strip in Sample A and Sample B is considered textile for tariff purposes because it meets the dimensional requirements of man-made fiber textile strips set forth in Note 1(g) to Section XI, HTSUSA.

As the braids at issue are classified under heading 5808, HTSUSA, and contain two or more textile materials, Subheading Note 2 to Section XI, HTSUSA, is applicable to them. Subheading Note 2, in pertinent part, states:

2. (A) Products of chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of chapters 50 to 55 or of heading 5809 consisting of the same textile materials.
- (B) For the application of this rule:
  - (a) Where appropriate, only the part which determines the classification under general interpretative rule 3 shall be taken into account[.]

Note 2 to Section XI, HTSUSA, in turn, states:

Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if con-

sisting wholly of that one textile material which predominates by weight over each other single textile material.

Where braids in the piece of heading 5808, HTSUSA, are composed only of interlaced textile material, the braid is akin to fabric of headings 50 to 55 and will be classified according to the textile material which predominates by weight pursuant to Note 2 to Section XI, HTSUSA. However, where braids in the piece of heading 5808, HTSUSA, are composed of an exterior braid of one material around a core of a different material, it is appropriate, pursuant to Subheading Note 2 to Section XI, HTSUSA, to take into account only the part which determines the classification of the braid under GRI 3. See HQ 957751, dated June 6, 1995. It would be in error to use chief weight alone to decide classification of the braid. *Id.* Such braids constitute composite goods. GRI 3(b) directs that for a composite good consisting of different materials, which cannot be classified by reference to GRI 3(a), classification shall be according to the component that imparts the essential character of the good.

In the case at hand, Sample A is composed only of metalized material. Note that the gimped strands in the construction, individually, are considered metalized yarns because their multifilament core is wrapped by metalized strip. Consequently, Sample A is classified in subheading 5808.10.9000, HTSUSA, which provides for: "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles: Braids in the piece: Other: Other."

Sample B, however, is composed of an exterior braid of metallic strip around a nylon core. Pursuant to Subheading Note 2 to Section XI, HTSUSA, it is appropriate to take into account only the part which determines the classification of the braid under GRI 3. The braid cannot be classified pursuant to GRI 3(a). Under GRI 3(b), the exterior metallic strip imparts the essential character of the good. Sample B, therefore, is also classified in subheading 5808.10.9000, HTSUSA.

HOLDING:

The articles identified as Sample A and Sample B in NY J82797 are classified in subheading 5808.10.9000, HTSUSA, which provides for: "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles: Braids in the piece: Other: Other." The applicable column one, general duty rate under the 2006 HTSUSA is 4.2 percent *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the world wide web at [www.usitc.gov](http://www.usitc.gov).

EFFECT ON OTHER RULINGS:

NY J82797, dated April 10, 2003, 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 and Trade Facilitation Division.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967829  
FEBRUARY 27, 2006  
CLA-2 RR:CR:TE 967829 BtB  
CATEGORY: Classification  
TARIFF NO.: 5808.10.9000

MS. YOLANDA S. MASSEY  
IMPORT MANAGER  
*Michaels Stores, Inc.*  
8000 Bent Branch Dr.  
Irving, Texas 75063

Re: Classification of braid in the piece from Taiwan; NY J82793 revoked

DEAR MS. MASSEY:

On April 9, 2003, U.S. Customs and Border Protection (CBP) issued New York Ruling Letter (NY) J82793 to Michaels Stores, Inc. ("Michaels"). In NY J82793, CBP classified an article from Taiwan identified as "Style MXT-12210" under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Upon review of that ruling, we have found that the classification provided for this article is incorrect. This ruling, Headquarters Ruling Letter (HQ) 967829, hereby revokes NY J82793 and sets forth the correct classification of the article.

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 J82793 was published in the *Customs Bulletin*, Volume 40, Number 2, on January 4, 2006. CBP received no comments during the notice and comment period that closed on February 3, 2006.

FACTS:

You submitted several samples of Style MXT-12210. The samples are identical except for color. They are the type of fancy cord used to wrap gifts and for similar uses.

In NY J82793, the Style MXT-12210 samples are described as: ". . . composed of a braided polyester core sheathed in a braid composed of six gimped strands (a multifilament cord wrapped by a metallic strip) mixed with numerous metallic strips, all braided together. . . . They measure 1/8" in diameter." While not stated in the ruling, Style MXT-12210 is not suitable for making or ornamenting headwear.

In NY J82793, CBP classified style Style MXT-12210 under subheading 5605.00.9000, HTSUSA, which provides for "Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal: Other."



## ISSUE:

Whether the article identified as Style MXT-12210 is classified in heading 5605, HTSUSA, as a metalized yarn or is it classified as a braid in the piece in heading 5808, HTSUSA.

## LAW AND ANALYSIS:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” If 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 order.

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

Heading 5605, HTSUSA, provides for “Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal.” The ENs to heading 5605 state that, among other articles, the heading covers:

- (1) **Yarn consisting of any textile material (including monofilament, strip and the like and paper yarn) combined with metal thread or strip**, whether obtained by a process of twisting, cabling or by gimping, whatever the proportion of the metal present. . . .

Braided constructions are not provided for in the terms of heading 5605 or mentioned in the ENs to that heading.

Heading 5808, HTSUSA, however, does provide for braided constructions. In its entirety, the heading provides for: “Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles.” The ENs to heading 5808 state that the products classified in the heading, among other articles, include:

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

These are obtained by interlacing diagonally yarns, or the monofilament, strip and the like of Chapter 54.

\* \* \* \* \*

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

Varieties of braid include lacing (e.g., for boot or shoe laces), piping, soutache, ornamental cords, braided galloons, etc. Tubular braid may have a textile core.

Braid is used for edging or ornamenting certain articles of apparel (e.g., decorative trim and piping) or furnishing articles (e.g., tiebacks for

curtains), as sheathing for electrical wiring, for the manufacture of certain shoes laces, anorak or track suit cords, cord belts for dressing gowns, etc.

Style MXT-12210's construction is not obtained by twisting, cabling or by gimping. Rather, it is of braided construction. The article is not yarn, but braid in the piece. It is, therefore, classified pursuant to GRI 1, under heading 5808, HTSUSA, which specifically provides for such articles.

We note that while Style MXT-12210 may not be strictly decorative, it is not as tightly plaited and compact as the braided articles of heading 5607, HTSUSA, and is not suitable for the uses set forth for articles classified in that heading (as twine, cordage, ropes or cables). *See generally*, HQ 965230, dated June 3, 2002.

While a yarn that contains any amount of metal is regarded in its entirety as a "metalized yarn," a braid of heading 5808, HTSUSA, that contains any amount of metal is not regarded in its entirety as being of metalized yarn. The metallic strip in Style MXT-12210 is considered textile for tariff purposes because it meets the dimensional requirements of man-made fiber textile strips set forth in Note 1(g) to Section XI, HTSUSA.

As Style MXT-12210 is classified under heading 5808, HTSUSA, and contains two or more textile materials, Subheading Note 2 to Section XI, HTSUSA, is applicable to it. Subheading Note 2, in pertinent part, states:

2. (A) Products of chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of chapters 50 to 55 or of heading 5809 consisting of the same textile materials.
- (B) For the application of this rule:
  - (a) Where appropriate, only the part which determines the classification under general interpretative rule 3 shall be taken into account[.]

Note 2 to Section XI, HTSUSA, in turn, states:

Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material.

Where braids in the piece of heading 5808, HTSUSA, are composed only of interlaced textile material, the braid is akin to fabric of headings 50 to 55 and will be classified according to the textile material which predominates by weight pursuant to Note 2 to Section XI, HTSUSA. However, where braids in the piece of heading 5808, HTSUSA, are composed of an exterior braid of one material around a core of a different material, it is appropriate, pursuant to Subheading Note 2 to Section XI, HTSUSA, to take into account only the part which determines the classification of the braid under GRI 3. *See* HQ 957751, dated June 6, 1995. It would be in error to use chief weight alone to decide classification of the braid. *Id.* Such braids constitute composite goods. GRI 3(b) directs that for a composite good consisting of different materials, which cannot be classified by reference to GRI 3(a), classification shall be according to the component that imparts the essential character of the good.

In the case at hand, Style MXT-12210 is composed of metallic strands and strip around a polyester core. Pursuant to Subheading Note 2 to Section XI, HTSUSA, it is appropriate to take into account only the part which determines the classification of the braid under GRI 3. The braid cannot be classified pursuant to GRI 3(a). Under GRI 3(b), the exterior metallic material imparts the essential character of the good. Style MXT-12210, therefore, is classified in subheading 5808.10.9000, HTSUSA.

HOLDING:

The article identified as Style MXT-12210 in NY J82793 is classified in subheading 5808.10.9000, HTSUSA, which provides for: "Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles: Braids in the piece: Other: Other." The applicable column one, general duty rate under the 2006 HTSUSA is 4.2 percent *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the world wide web at [www.usitc.gov](http://www.usitc.gov).

EFFECT ON OTHER RULINGS:

NY J82793, dated April 9, 2003, 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 and Trade Facilitation Division.*



[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967830  
FEBRUARY 27, 2006  
CLA-2 RR:CR:TE 967830 BtB  
CATEGORY: Classification  
TARIFF NO.: 5808.10.7000, 5808.10.9000

JANET L. TELLES  
GLOBAL COMPLIANCE MANAGER  
SMITH INTERNATIONAL ENTERPRISES, LTD.  
*20600 Chagrin Blvd.*  
*Suite 200*  
*Shaker Heights, OH 44122*

Re: Classification of braid in the piece from Hong Kong; NY H87352 modified

DEAR MS. TELLES:

On February 19, 2002, U.S. Customs and Border Protection (CBP) issued New York Ruling Letter (NY) H87352 to you. In NY H87352, CBP classified

several samples of twine, yarns, and trimmings from Hong Kong under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

Upon review of that ruling, we have found that the classifications provided for several samples are incorrect. This ruling, Headquarters Ruling Letter (HQ) 967830, hereby modifies NY H87352 and sets forth the correct classification of those samples.

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 H87352 was published in the Customs Bulletin, Volume 40, Number 2, on January 4, 2006. CBP received no comments during the notice and comment period that closed on February 3, 2006.

**FACTS:**

In NY H87352, the samples at issue were identified as KS2, KS3, KS5 and KS6. In the ruling, KS3 and KS6 were described as:

They are described as polypropylene and metallic. KS3 and KS6 are braided yarns. KS3 has four polypropylene multifilament strands braided with two metallic strips. KS6 has four multifilament strands of polypropylene braided with four multi-ply strands of multifilament yarn gimped (that is, wrapped) with metallic strips.

Also in NY H87352, KS2 was described as: “. . . a braided yarn composed of multiple multifilament strands of textile and metallic textile strip.” KS5 was described as: “. . . a flat braided multifilament yarn gimped with metallic strip.” While not stated in NY H87352, KS5 has a core composed of four twisted single multifilament yarns, which are laid out flat in parallel fashion. Its sheath is composed of sixteen gimped metallic yarns (each is a single multifilament yarn gimped, or wrapped, with metallic strip). These metallic yarns are braided around the core yarns, which are laid out parallel to each other, creating the flat braid.

In NY H87352, CBP classified KS2 and KS3 under subheading 5605.00.1000, HTSUSA, which provides for “Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal: Metal coated or metal laminated man-made filament or strip or the like, ungimped, and untwisted or with twist of less than 5 turns per meter.” Also in NY H87352, CBP classified KS5 and KS6 under subheading 5605.00.9000, HTSUSA, which provides for “Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal: Other.”

**ISSUE:**

Whether the samples identified as KS2, KS3, KS5 and KS6 are classified in heading 5605, HTSUSA, as metalized yarns or are they classified as braid in the piece in heading 5808, HTSUSA.

**LAW AND ANALYSIS:**

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any

relative section or chapter notes.” If 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 order.

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

Heading 5605, HTSUSA, provides for “Metalized yarn, whether or not gimped, being textile yarn, or strip or the like of heading 5404 or 5405, combined with metal in the form of thread, strip or powder or covered with metal.” The ENs to heading 5605 state that, among other articles, the heading covers:

- (1) **Yarn consisting of any textile material (including monofilament, strip and the like and paper yarn) combined with metal thread or strip**, whether obtained by a process of twisting, cabling or by gimping, whatever the proportion of the metal present. . . .

Braided constructions are not provided for in the terms of heading 5605 or mentioned in the ENs to that heading.

Heading 5808, HTSUSA, however, does provide for braided constructions. In its entirety, the heading provides for: “Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles.” The ENs to heading 5808 state that the products classified in the heading, among other articles, include:

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

These are obtained by interlacing diagonally yarns, or the monofilament, strip and the like of Chapter 54.

\* \* \* \* \*

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

Varieties of braid include lacing (e.g., for boot or shoe laces), piping, soutache, ornamental cords, braided galloons, etc. Tubular braid may have a textile core.

Braid is used for edging or ornamenting certain articles of apparel (e.g., decorative trim and piping) or furnishing articles (e.g., tiebacks for curtains), as sheathing for electrical wiring, for the manufacture of certain shoes laces, anorak or track suit cords, cord belts for dressing gowns, etc.

The construction of the samples identified as KS2, KS3, KS5 and KS6 is not obtained by twisting, cabling or by gimping. Rather, all of these samples are of braided construction. The articles are not yarns, but braids in the piece. They are, therefore, classified pursuant to GRI 1, under heading 5808, HTSUSA, which specifically provides for such articles. Each of the samples is classified in subheading 5808.10, which provides for braids in the piece.

We note that while the samples identified as KS2, KS3, KS5 and KS6 may not be strictly decorative, they are not as tightly plaited and compact as the braided articles of heading 5607, HTSUSA, and are not suitable for the uses set forth for articles classified in that heading (as twine, cordage, ropes or cables). *See generally*, HQ 965230, dated June 3, 2002.

While a yarn that contains any amount of metal is regarded in its entirety as a “metalized yarn,” a braid of heading 5808, HTSUSA, that contains any amount of metal is not regarded in its entirety as being of metalized yarn. The metallic strip in each of the constructions is considered textile for tariff purposes because it meets the dimensional requirements of man-made fiber textile strips set forth in Note 1(g) to Section XI, HTSUSA.

As the braids at issue are classified under heading 5808, HTSUSA, and contain two or more textile materials, Subheading Note 2 to Section XI, HTSUSA, is applicable to them. Subheading Note 2, in pertinent part, states:

2. (A) Products of chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of chapters 50 to 55 or of heading 5809 consisting of the same textile materials.
- (B) For the application of this rule:
  - (a) Where appropriate, only the part which determines the classification under general interpretative rule 3 shall be taken into account[.]

Note 2 to Section XI, HTSUSA, in turn, states:

Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material.

Where braids in the piece of heading 5808, HTSUSA, are composed only of interlaced textile material, the braid is akin to fabric of headings 50 to 55 and will be classified according to the textile material which predominates by weight pursuant to Note 2 to Section XI, HTSUSA. However, where braids in the piece of heading 5808, HTSUSA, are composed of an exterior braid of one material around a core of a different material, it is appropriate, pursuant to Subheading Note 2 to Section XI, HTSUSA, to take into account only the part which determines the classification of the braid under GRI 3. *See* HQ 957751, dated June 6, 1995. It would be in error to use chief weight alone to decide classification of the braid. *Id.* Such braids constitute composite goods. GRI 3(b) directs that for a composite good consisting of different materials, which cannot be classified by reference to GRI 3(a), classification shall be according to the component that imparts the essential character of the good.

In the case at hand, KS2, KS3 and KS6 are composed only of interlaced textile material. Accordingly, these articles are classified according to the textile material which predominates by weight. If the man-made fibers in these samples predominate by weight, the samples will be classified in subheading 5808.10.7000, HTSUSA, which provides for: “Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or

crocheted; tassels, pompons and similar articles: Braids in the piece: Other: Of cotton or man-made fibers.” However, if the metallic strip in the samples predominates by weight, the samples will be classified in subheading 5808.10.9000, HTSUSA, which provides for: “Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles: Braids in the piece: Other: Other.”

KS5 is composed of an exterior braid of sixteen gimped metallic yarns around a core of four twisted single multifilament yarns. Pursuant to Subheading Note 2 to Section XI, HTSUSA, it is appropriate to take into account only the part which determines the classification of the braid under GRI 3. The braid cannot be classified pursuant to GRI 3(a). Under GRI 3(b), the exterior metallic yarns impart the essential character of the good. The article, therefore, is classified in subheading 5808.10.9000, HTSUSA.

**HOLDING:**

The articles identified as KS2, KS3 and KS6 in NY H87352 are classified in subheading 5808.10, HTSUSA, which provides for: “Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles: Braids in the piece.” We are not able to classify these articles at the 8-digit or 10-digit level because we do not have information relating to which material predominates by weight in each construction. As a result, we cannot set forth a rate of the duty for the articles.

The article identified as KS5 is classified in subheading 5808.10.9000, HTSUSA, which provides for: “Braids in the piece; ornamental trimmings in the piece, without embroidery, other than knitted or crocheted; tassels, pompons and similar articles: Braids in the piece: Other: Other.” The applicable column one, general duty rate under the 2006 HTSUSA is 4.2 percent *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUSA and the accompanying duty rates are provided on the world wide web at [www.usitc.gov](http://www.usitc.gov).

Note that if KS2, KS3, and/or KS6 are classified as of man-made fibers in subheading 5808.10.7000, HTSUSA, they will fall within textile category 229. Quota/visa requirements are no longer applicable for merchandise which is the product of World Trade Organization (WTO) member countries. The textile category number above applies to merchandise produced in non-WTO member countries. Quota and visa requirements are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information on quota and visa requirements applicable to this merchandise, we suggest you check, close to the time of shipment, the “Textile Status Report for Absolute Quotas” which is available on our web site at [www.cbp.gov](http://www.cbp.gov). For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at [otexa.ita.doc.gov](http://otexa.ita.doc.gov).

**EFFECT ON OTHER RULINGS:**

NY H87352, dated February 19, 2002, is hereby modified as to the classification of KS2, KS3, KS5 and KS6. The classifications for the other articles in NY H87352 are correct and this ruling does not affect them. In accor-

dance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

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

---

**PROPOSED REVOCATION OF TWO RULING LETTERS  
AND REVOCATION OF TREATMENT RELATING TO  
TARIFF CLASSIFICATION OF BEEF JERKY**

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

**ACTION:** Proposed revocation of two tariff classification ruling letters and revocation of treatment relating to the classification of beef jerky.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is proposing to revoke two ruling letters relating to the tariff classification of beef jerky under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

**DATE:** Comments must be received on or before April 14, 2006.

**ADDRESS:** Written comments are to be addressed to the Bureau of Customs and Border Protection, Office of Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at the offices of Customs and Border Protection, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

**FOR FURTHER INFORMATION CONTACT:** Kelly Herman, Tariff Classification and Marking Branch: (202) 572-8713.

**SUPPLEMENTARY INFORMATION:**

**BACKGROUND**

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



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

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to revoke two ruling letters pertaining to the tariff classification of beef jerky. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letters (NY) I84087, dated July 25, 2002 (Attachment A) and NY I84133, dated July 25, 2002 (Attachment B), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer’s failure to advise CBP 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 decision on this notice.

In NY I84087, CBP ruled that “Teriyaki Beef Jerky,” item BRZTK100 and “Teriyaki Beef Jerky,” item BRZTK101, were classified in subheading 1602.50.2040, HTSUSA, which provides for “Other prepared or preserved meat, meat offal or blood: Of bovine animals: Other: Not containing cereals or vegetables: Other: In airtight containers: Other, Other.” Since the issuance of that ruling,

CBP has reviewed the classification of these items and has determined that the cited ruling is in error, and that the beef jerky should be classified in subheading 1602.50.0900, HTSUS, which provides for "Other prepared or preserved meat, meat offal or blood: Of bovine animals: Other: Not containing cereals or vegetables: Cured or pickled."

In NY I84133, CBP ruled that "Old Fashioned Beef Jerky," item BRZOF120, "Peppered Beef Jerky," item BRZPP140 and "Mexican Brand Beef Jerky," item BRZMX150, were classified in subheading 1602.50.2040, HTSUSA, which provides for "Other prepared or preserved meat, meat offal or blood: Of bovine animals: Other: Not containing cereals or vegetables: Other: In airtight containers: Other, Other." Since the issuance of that ruling, CBP has reviewed the classification of these items and has determined that the cited ruling is in error, and that the beef jerky should be classified in subheading 1602.50.0900, HTSUS, which provides for "Other prepared or preserved meat, meat offal or blood: Of bovine animals: Other: Not containing cereals or vegetables: Cured or pickled."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY I84087 and NY I84133 and is proposing to revoke or modify any other ruling not specifically identified, to reflect the proper classification of the beef jerky according to the analysis contained in Headquarters Ruling Letters (HQ) 968047 and HQ 968048, set forth as Attachments C and D, respectively, to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

**DATED:** February 28, 2006

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

Attachments

## [ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY I84087  
JULY 25, 2002  
CLA-2-16:RR:NC:2:231 I84087  
CATEGORY: Classification  
TARIFF NO.: 1602.50.2040

MR. CHARLES RILEY  
JOHN A. STEER COMPANY  
28 South Second Street  
Philadelphia, PA 19106

RE: The tariff classification of cooked and seasoned beef from Brazil.

DEAR MR. RILEY:

In your letter, dated July 7, 2002, you requested a tariff classification ruling on behalf of your client, BrucePac, Inc., Silverton, OR.

The merchandise is described thus:

"Teriyaki Beef Jerky," item BRZTK100, is sliced, cooked, and seasoned beef that is packaged in bulk for further processing. The ingredients are sliced beef, water, brown sugar, sugar, soy sauce powder, salt, hydrolyzed corn protein, vinegar, monosodium glutamate, ginger, torula yeast, onion powder, spices (ground celery seed and ground ginger), garlic powder, citric acid, spice extractive (oleoresin ginger), and a curing agent (containing sodium nitrite). The meat contains, by weight, 30 percent protein, 24 percent moisture, 5 percent fat, and 2.5 percent salt.

"Teriyaki Beef Jerky," item BRZTK101, is sliced, cooked, and seasoned beef that is packaged in bulk for further processing. The ingredients are sliced beef, water, brown sugar, sugar, salt, hydrolyzed soy protein, spice (powdered ginger), vinegar, monosodium glutamate, powdered onion, powdered garlic, citric acid, and a curing agent (containing sodium nitrite). The meat contains, by weight, 30 percent protein, 24 percent moisture, 5 percent fat, and 2.5 percent salt.

During the manufacturing process, fat is removed from fresh meat and the meat is sliced. After slicing, the meat is taken to a tumbling area where water and seasoning are added. The meat is tumbled for 20 minutes and placed in a cooler for a period of one day (for curing). Then meat is placed in an oven for cooking and smoking. The meat is atomized with natural wood smoke flavor for 15 minutes. The product is cooked for six hours until an internal temperature of 155° Fahrenheit is reached. It is then cooked at smokehouse temperature (180° Fahrenheit) until a moisture range of 22-24 percent is achieved. The meat is cooled at room temperature and packed in plastic totes. The totes are taken to the packaging room where the product is placed in plastic bags that are sealed and an oxygen scavenger is added. The products are imported in corrugated cartons (in bulk) for further processing.

The applicable subheading for beef jerky (items 1 and 2) will be 1602.50.2040, Harmonized Tariff Schedule of the United States (HTS), which provides for other prepared or preserved meat, meat offal or blood, of bovine animals, other, not containing cereals or vegetables, other, in airtight containers, other, other. The rate of duty will be 1.4 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 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 Thomas Brady at (646) 733-3030.

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



[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY I84133  
JULY 25, 2002  
CLA-2-16:RR:NC:2:231 I84133  
CATEGORY: Classification  
TARIFF NO.: 1602.50.2040

MR. CHARLES RILEY  
JOHN A. STEER COMPANY  
28 South Second Street  
Philadelphia, PA 19106

RE: The tariff classification of cooked and seasoned beef from Brazil.

DEAR MR. RILEY:

In your letter, dated July 7, 2002, you requested a tariff classification ruling on behalf of your client, BrucePac, Inc., Silverton, OR.

The merchandise is described thus:

“Old Fashioned Beef Jerky,” item BRZOF120, is sliced, cooked, and seasoned beef that is packaged in bulk for further processing. The ingredients are sliced beef, brown sugar, water, salt, vinegar, black pepper, garlic powder, monosodium glutamate, citric acid, and a curing agent (containing sodium nitrite). The meat contains, by weight, 30 percent protein, 24 percent moisture, 5 percent fat, and 2.5 percent salt.

“Peppered Beef Jerky,” item BRZPP140, is sliced, cooked, and seasoned beef that is packaged in bulk for further processing. The ingredients are sliced beef, brown sugar, water, salt, black pepper, vinegar, garlic powder, monosodium glutamate, citric acid, and a curing agent (containing sodium nitrite). The meat contains, by weight, 30 percent protein, 24 percent moisture, 5 percent fat, and 2.5 percent salt.

“Mexican Brand Beef Jerky,” item BRZMX150, is sliced, cooked, and seasoned beef that is packaged in bulk for further processing. The ingredients are sliced beef, brown sugar, water, salt, red pepper, black pepper, garlic powder, monosodium glutamate, oregano, citric acid, and a curing agent

(containing sodium nitrite). The meat contains, by weight, 30 percent protein, 24 percent moisture, 5 percent fat, and 2.5 percent salt.

During the manufacturing process, fat is removed from fresh meat and the meat is sliced. After slicing, the meat is taken to a tumbling area where water and seasoning are added. The meat is tumbled for 20 minutes and placed in a cooler for a period of one day (for curing). Then meat is placed in an oven for cooking and smoking. The meat is atomized with natural wood smoke flavor for 15 minutes. The product is cooked for six hours until an internal temperature of 155° Fahrenheit is reached. It is then cooked at smokehouse temperature (180° Fahrenheit) until a moisture range of 22–24 percent is achieved. The meat is cooled at room temperature and packed in plastic totes. The totes are taken to the packaging room where the product is placed in plastic bags that are sealed and an oxygen scavenger is added. The products are imported in corrugated cartons (in bulk) for further processing.

The applicable subheading for beef jerky (items 1, 2, and 3) will be 1602.50.2040, Harmonized Tariff Schedule of the United States (HTS), which provides for other prepared or preserved meat, meat offal or blood, of bovine animals, other, not containing cereals or vegetables, other, in airtight containers, other, other. The rate of duty will be 1.4 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 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 Thomas Brady at (646) 733-3030.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 968047  
CLA-2 RR:CTF:TCM 968047 KSH  
TARIFF NO.: 1602.50.0900

MR. CHARLES RILEY  
JOHN A. STEER COMPANY  
28 South 2nd Street  
Philadelphia, PA 19106

RE: Revocation of New York Ruling Letter (NY) I84087, dated July 25, 2002; Classification of beef jerky from Brazil.

DEAR MR. RILEY:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I84087, issued on July 25, 2002, concerning the classification under the Harmonized Tariff

Schedule of the United States (HTSUS) of beef jerky from Brazil. The beef jerky was classified in subheading 1602.50.2040, HTSUS, which provides for "Other prepared or preserved meat, meat offal or blood: Of bovine animals: Other: Not containing cereals or vegetables: Other: In airtight containers: Other, Other." Since the issuance of NY I84087, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

**FACTS:**

The beef jerky is described as:

1. "Teriyaki Beef Jerky," item BRZTK100, is sliced, cooked, and seasoned beef that is packaged in bulk for further processing. The ingredients are sliced beef, water, brown sugar, sugar, soy sauce powder, salt, hydrolyzed corn protein, vinegar, monosodium glutamate, ginger, torula yeast, onion powder, spices (ground celery seed and ground ginger), garlic powder, citric acid, spice extractive (oleoresin ginger), and a curing agent (containing sodium nitrite). The meat contains, by weight, 30 percent protein, 24 percent moisture, 5 percent fat, and 2.5 percent salt.
2. "Teriyaki Beef Jerky," item BRZTK101, is sliced, cooked, and seasoned beef that is packaged in bulk for further processing. The ingredients are sliced beef, water, brown sugar, sugar, salt, hydrolyzed soy protein, spice (powdered ginger), vinegar, monosodium glutamate, powdered onion, powdered garlic, citric acid, and a curing agent (containing sodium nitrite). The meat contains, by weight, 30 percent protein, 24 percent moisture, 5 percent fat, and 2.5 percent salt.

During the manufacturing process, fat is removed from fresh meat and the meat is sliced. After slicing, the meat is taken to a tumbling area where water and seasoning are added. The meat is tumbled for 20 minutes and placed in a cooler for a period of one day (for curing). Then meat is placed in an oven for cooking and smoking. The meat is atomized with natural wood smoke flavor for 15 minutes. The product is cooked for six hours until an internal temperature of 155° Fahrenheit is reached. It is then cooked at smokehouse temperature (180° Fahrenheit) until a moisture range of 22–24 percent is achieved. The meat is cooled at room temperature and packed in plastic totes. The totes are taken to the packaging room where the product is placed in plastic bags that are sealed and an oxygen scavenger is added. The products are imported in corrugated cartons (in bulk) for further processing.

**ISSUE:**

Whether the beef jerky is classified as other prepared or preserved meat of subheading 1602.50.2040, HTSUS or as cured or pickled beef of subheading 1602.50.0900, HTSUS.

**LAW AND ANALYSIS:**

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

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff

at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI. See T.D. 89-80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Heading 1602, HTSUS, provides for other prepared or preserved meat, meat offal or blood. The Explanatory Notes to heading 1602, HTSUS, provide, in part, the methods by which meat of this heading may be prepared or preserved. It reads in relevant part:

The heading covers :

- (3) Meat and meat offal prepared or preserved by other processes not provided for in Chapter 2 or heading 05.04, including those merely covered with batter or bread crumbs, truffled, seasoned (e.g., with both pepper and salt) or finely homogenised (see the General Explanatory Note to this Chapter, Item (4)).

The instant beef jerky is preserved by a curing or pickling mixture containing salt, sugar or other sweeteners and a mixture of additional preservative ingredients including sodium nitrate. As such, the beef jerky is prepared or preserved as provided for in heading 1602, HTSUS.

Heading 1602, HTSUS, is divided into six subheadings. Subheading 1602.50, HTSUS, provides for prepared or preserved beef of bovine animals. Subheading 1602.50, HTSUS, is further subdivided to provide for cured or pickled beef or other prepared beef. When the issue is based on competing subheadings, for purposes of determining the subheading, GRI 6 is applied. GRI 6 provides that "for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and mutatis mutandis, to [rules 1 through 5], on the understanding that only subheadings at the same level are comparable."

The curing or pickling of meats is a preservative process in which the primary preservative ingredient is salt. Other basic ingredients used in the curing process are sugar, other sweeteners and nitrate or sodium nitrate. Other compounds that may be used in the curing process include spices, baking soda, sodium erythrobate, hydrolyzed vegetable proteins and monosodium glutamate. There are two procedures for curing meats, i.e., dry curing or processing in a pickle cure. In pickle curing, the ingredients are dissolved in water which forms a brine. The meats are submerged in the pickle brine until the cure has completely penetrated the meat. Meats that are cured are also frequently smoked. Although the cured meats are smoked they are not necessarily also cooked. In order to meet lethality guidelines the beef jerky would be required to be heated to 155° Fahrenheit to destroy any pathogens in the meat.

In the instant case, the sliced beef is tumbled or pickled with water and seasoning. After placing the meat in the water and seasoning it is placed in a cooler for further curing. As the beef jerky is prepared or preserved beef which has been pickled or cured it is specifically provided for in subheading 1602.50.0900, HTSUS, rather than as other prepared beef of subheading 1602.50.2040, HTSUS. See NY 88751, dated July 15, 1993.

HOLDING:

The beef jerky is classified in heading 1602, HTSUS. It is specifically provided for in subheading 1602.50.0900, HTSUS, which provides for "Other

prepared or preserved meat, meat offal or blood: Of bovine animals: Other: Not containing cereals or vegetables: Cured or pickled.” The general column one rate of duty is 4.5% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at [www.usitc.gov](http://www.usitc.gov).

EFFECT ON OTHER RULINGS:

NY I84087, dated July 25, 2002, is hereby revoked.

MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 968048  
CLA-2 RR:CTF:TCM 968048 KSH  
TARIFF NO.: 1602.50.0900

MR. CHARLES RILEY  
JOHN A. STEER COMPANY  
28 South 2nd Street  
Philadelphia, PA 19106

RE: Revocation of New York Ruling Letter (NY) I84133, dated July 25, 2002; Classification of beef jerky from Brazil.

DEAR MR. RILEY:

This letter is to inform you that the Bureau of Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I84133, issued to you on July 25, 2002, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of beef jerky from Brazil. The beef jerky was classified in subheading 1602.50.2040, HTSUS, which provides for “Other prepared or preserved meat, meat offal or blood: Of bovine animals: Other: Not containing cereals or vegetables: Other: In airtight containers: Other, Other.” Since the issuance of NY I84133, CBP has reviewed the classification of this item and has determined that the cited ruling is in error.

FACTS:

The beef jerky is described as:

“Old Fashioned Beef Jerky,” item BRZOF120, is sliced, cooked, and seasoned beef that is packaged in bulk for further processing. The ingredients are sliced beef, brown sugar, water, salt, vinegar, black pepper, garlic powder, monosodium glutamate, citric acid, and a curing agent (containing sodium nitrite). The meat contains, by weight, 30 percent protein, 24 percent moisture, 5 percent fat, and 2.5 percent salt.



“Peppered Beef Jerky,” item BRZPP140, is sliced, cooked, and seasoned beef that is packaged in bulk for further processing. The ingredients are sliced beef, brown sugar, water, salt, black pepper, vinegar, garlic powder, monosodium glutamate, citric acid, and a curing agent (containing sodium nitrite). The meat contains, by weight, 30 percent protein, 24 percent moisture, 5 percent fat, and 2.5 percent salt.

“Mexican Brand Beef Jerky,” item BRZMX150, is sliced, cooked, and seasoned beef that is packaged in bulk for further processing. The ingredients are sliced beef, brown sugar, water, salt, red pepper, black pepper, garlic powder, monosodium glutamate, oregano, citric acid, and a curing agent (containing sodium nitrite). The meat contains, by weight, 30 percent protein, 24 percent moisture, 5 percent fat, and 2.5 percent salt.

During the manufacturing process, fat is removed from fresh meat and the meat is sliced. After slicing, the meat is taken to a tumbling area where water and seasoning are added. The meat is tumbled for 20 minutes and placed in a cooler for a period of one day (for curing). Then meat is placed in an oven for cooking and smoking. The meat is atomized with natural wood smoke flavor for 15 minutes. The product is cooked for six hours until an internal temperature of 155° Fahrenheit is reached. It is then cooked at smokehouse temperature (180° Fahrenheit) until a moisture range of 22–24 percent is achieved. The meat is cooled at room temperature and packed in plastic totes. The totes are taken to the packaging room where the product is placed in plastic bags that are sealed and an oxygen scavenger is added. The products are imported in corrugated cartons (in bulk) for further processing.

#### ISSUE:

Whether the beef jerky is classified as other prepared or preserved meat of subheading 1602.50.2040, HTSUS or as cured or pickled beef of subheading 1602.50.0900, HTSUS.

#### LAW AND ANALYSIS:

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

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI. See T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Heading 1602, HTSUS, provides for other prepared or preserved meat, meat offal or blood. The Explanatory Notes to heading 1602, HTSUS, provide, in part, the methods by which meat of this heading may be prepared or preserved. It reads in relevant part:

The heading covers:

- (3) Meat and meat offal prepared or preserved by other processes not provided for in Chapter 2 or heading 05.04, including those merely covered with batter or bread crumbs, truffled, seasoned (e.g., with both

pepper and salt) or finely homogenised (see the General Explanatory Note to this Chapter, Item (4)).

The instant beef jerky is preserved by curing in a cooler for a period of one day. As such, the beef jerky is prepared or preserved as provided for in heading 1602, HTSUS.

Heading 1602, HTSUS, is divided into six subheadings. Subheading 1602.50, HTSUS, provides for prepared or preserved beef of bovine animals. Subheading 1602.50, HTSUS, is further subdivided to provide for cured or pickled beef or other prepared beef. When the issue is based on competing subheadings, for purposes of determining the subheading, GRI 6 is applied. GRI 6 provides that "for legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and *mutatis mutandis*, to [rules 1 through 5], on the understanding that only subheadings at the same level are comparable."

The curing or pickling of meats is a preservative process in which the primary preservative ingredient is salt. Other basic ingredients used in the curing process are sugar, other sweeteners and nitrate or sodium nitrate. Other compounds that may be used in the curing process include spices, baking soda, sodium erythroate, hydrolyzed vegetable proteins and monosodium glutamate. There are two procedures for curing meats, i.e., dry curing or processing in a pickle cure. In pickle curing, the ingredients are dissolved in water which forms a brine. The meats are submerged in the pickle brine until the cure has completely penetrated the meat. Meats that are cured are also frequently smoked. Although the cured meats are smoked they are not necessarily also cooked. In order to meet lethality guidelines the beef jerky would be required to be heated to 155° Fahrenheit to destroy any pathogens in the meat.

In the instant case, the sliced beef is tumbled or pickled with water and seasoning. After placing the meat in the water and seasoning it is placed in a cooler for further curing. As the beef jerky is prepared or preserved beef which has been pickled or cured it is specifically provided for in subheading 1602.50.0900, HTSUS, rather than as other prepared beef of subheading 1602.50.2040, HTSUS. See NY 88751, dated July 15, 1993.

**HOLDING:**

The beef jerky is classified in heading 1602, HTSUS. It is specifically provided for in subheading 1602.50.0900, HTSUS, which provides for "Other prepared or preserved meat, meat offal or blood: Of bovine animals: Other: Not containing cereals or vegetables: Cured or pickled." The general column one rate of duty is 4.5% *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY I84133, dated July 25, 2002, is hereby revoked.

MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

**19 CFR PART 177****PROPOSED MODIFICATION AND REVOCATION OF  
RULING LETTERS AND REVOCATION OF TREATMENT  
RELATING TO TARIFF CLASSIFICATION OF ALLIGATOR  
CLIPS**

**AGENCY:** U. S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** Notice of proposed modification and revocation of ruling letters and revocation of treatment relating to tariff classification of alligator clips.

**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 CBP intends to modify one ruling and to revoke another ruling relating to the classification of alligator clips under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), and to revoke any treatment CBP has previously accorded to substantially identical transactions. Alligator clips are devices with spring-loaded serrated jaws on one end and a female portal on the other end and are used to make an electrical connection between two circuits or systems. CBP invites comments on the correctness of the proposed action.

**DATE:** Comments must be received on or before April 14, 2006.

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

**FOR FURTHER INFORMATION CONTACT:** James A. Seal, Tariff Classification and Marking Branch (202) 572-8779.

**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 CBP 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 CBP 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 CBP to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to modify one ruling and to revoke another ruling relating to the tariff classification of alligator clips. Although in this notice CBP is specifically referring to two rulings, NY C81069 and NY F87872, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the ones listed. No further rulings have been identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise CBP 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, CBP intends to revoke any treatment it previously accorded to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP 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 the effective date of the final decision on this notice.

In NY C81069, dated November 19, 1997, copper alligator clips, among other devices, were found to be classifiable as other apparatus for making connections to or in electrical circuits, for a voltage not exceeding 1,000 V, in subheading 8536.90.8085, HTSUSA. In F87872, dated June 30, 2000, alligator-type clips used to make electrical connections were found to be similarly classifiable. These rulings were based on the belief that these devices conformed to the tar-

iff description in subheading 8536.90.8085. NY C81069 is set forth as "Attachment A" to this document and NY F87872 as "Attachment B."

It is now CBP's position that these devices are classifiable in subheading 8536.90.4000, HTSUSA, as terminals, electrical splices and electrical couplings which are other electrical apparatus of heading 8536. Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY C81069 and to revoke NY F87872 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis in HQ 968095 and HQ 968094, which are set forth as "Attachment C" and "Attachment D" to this document, respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

**DATED:** February 28, 2006

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

#### Attachments



#### [ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY C81069  
NOVEMBER 19, 1997  
CLA-2-85:RR:NC:1:112 C81069  
CATEGORY: Classification  
TARIFF NO.: 8536.90.8085; 8546.90.0000

MR. JIM REYNOLDS  
JOHN A. STEER COMPANY  
28 S. Second Street  
Philadelphia, PA 19106

RE: The tariff classification of electrical clips and insulators from Taiwan

DEAR MR. REYNOLDS:

In your letter dated October 23, 1997, on behalf of National Refrigeration & Air Conditioning Products, Inc., you requested a tariff classification ruling.

As indicated by the submitted samples, the items in question consist of a copper alligator clip (part 060CS), a 20 AMP test clip (part 027), one black/red insulator (part 062B/R), and one black/red insulator (part 029B/R). Both insulators are made of what appears to be rubber.

The applicable subheading for the alligator clip and test clip will be 8536.90.8085, Harmonized Tariff Schedule of the United States (HTS), which provides for other apparatus for making connections to or in electrical circuits, for a voltage not exceeding 1,000 V. The rate of duty will be 3.7 percent ad valorem. The applicable subheading for the insulators will be 8546.90.0000, HTS, which provides for electrical insulators other than of glass or ceramics. The rate of duty will be 1.5 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 David Curran at 212-466-5680.

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



[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

NY F87872  
JUNE 30, 2000  
CLA-2-85:RR:NC:1:112 F87872  
CATEGORY: Classification  
TARIFF NO.: 8536.90.8085

MR. MICHAEL J. HUEGEL  
FASTENAL COMPANY  
2001 Theurer Boulevard  
Winona, MN 55987

RE: The tariff classification of an electrical clip from Taiwan

DEAR MR. HUEGEL:

In your letter dated May 30, 2000 you requested a tariff classification ruling.

As indicated by the submitted sample, the electrical clip, identified as part number 0702083, is an "alligator" type clip that is used to make an electrical connection. In use, one end is a receptacle for an electric wire and the other end, which is capable of opening via a built-in spring mechanism, attaches to an electrical device in order to complete a circuit.

The applicable subheading for the electrical clip, part number 0702083, will be 8536.90.8085, Harmonized Tariff Schedule of the United States (HTS), which provides for other electrical apparatus for making connections to or in electrical circuits. The rate of duty will be 2.6 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is im-

ported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 212-637-7049.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 968095**  
**CLA-2 RR:CTF:TCM 968095 JAS**  
**CATEGORY:** Classification  
**TARIFF NO.:** 8536.90.4000

MR. JIM REYNOLDS  
JOHN A. STEER COMPANY  
28 S. Second Street  
Philadelphia, PA 19106

**RE:** Alligator Clips; NY C81069 Modified

DEAR MR. REYNOLDS:

In NY C81069, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on November 19, 1997, on behalf of National Refrigeration & Air Conditioning Products, Inc., a copper alligator clip (part 060CS) was found to be classifiable as other electrical apparatus for making connections to or in electrical circuits, for a voltage not exceeding 1,000 V, in subheading 8536.90.8085, Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

We have reconsidered the above classification and now believe that it is incorrect. The classification of the 20 AMP test clip (part 027) and the rubber insulators (parts 062B/R and 029B/R) expressed in NY C81069 is not affected by this decision.

**FACTS:**

The alligator clip is not further described in NY C81069 nor is its intended service application or applications stated. It is noted that some alligator clips are merely mechanical clips for attaching one thing to another as, for example, for affixing one's bib in the dentist's office. However, the ones under consideration here are of base metal and have spring-loaded serrated jaws on one end and a female portal on the other end. In use, an electrical lead wire is plugged into the female portal and the serrated jaws clamped onto another device to provide a connection for electrical energy to pass through. Among other things, these devices are commonly used with electrostatic discharge systems (EDS), electrocardiogram (ECG) machines and test and measurement systems.

The HTSUS provisions under consideration are as follows:

- 8536** Electrical apparatus for switching or for protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes,) for a voltage not exceeding 1,000 V:
- 8536.90** Other apparatus:
- 8536.90.40** Terminals, electrical splices and electrical couplings; wafer probers
- 8536.90.80** Other

**ISSUE:**

Whether the copper alligator clip (part 060CS) is a terminal provided for in subheading 8536.90.40.

**LAW AND ANALYSIS:**

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 6 states, in part, that the classification of goods in the subheadings of a heading is to be according to the terms of those subheadings and any related section and chapter notes and, by appropriate substitution of terms, to Rules 1 through 5, and that only subheadings at the same level are comparable.

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

In reviewing the classification of this merchandise, alligator or alligator-type clips qualify under heading 8536 as electrical apparatus for making connections to or in electrical circuits. However, it now appears the issue of whether they might be terminals of the type classifiable in subheading 8536.90.40, HTSUS, was not given sufficient consideration. As the term "terminal" is not defined in the HTSUS, nor described by any relevant EN, it is to be classified according to the common and commercial meaning of the term, as derived from electronics dictionaries and dictionaries of scientific and technical terms, as well as other authoritative lexicons. Brown Boveri Corp. v. United States, 53 CCPA 19, 23, C.A.D. 870 (1966), and THK America, Inc. v. United States, 17 C.I.T. 1169, 837 F. Supp. 427 (Ct. Int'l Trade, decided November 1, 1993). Thus, if the alligator clips are found to be "terminals" for tariff purposes, subheading 8536.90.40, HTSUS, would more specifically describe the merchandise than subheading 8536.90.80, HTSUS, and would prevail over that provision.

First of all, it is only those alligator clips that are configured for electrical connection, that are at issue here. In this regard, The Modern Dictionary of Electronics, Seventh Edition, Rudolf F. Graf (Editor), defines the term *alli-*



*gator clip* as a “spring loaded metal clip . . . used for making temporary electrical connections, generally at the end of a test lead on interconnection wire.” The same source defines *terminal* as “1. A point of connection for two or more conductors in an electrical circuit. 2. A device attached to a conductor to facilitate connection with another conductor. Webster’s New Universal Dictionary (Unabridged) defines *alligator clip* as “*Elect.* A type of terminal for making temporary electrical connections, consisting of a clip-like device. . .” The New Oxford American Dictionary (2d Edition), defines *terminal* as “n. 2 a point of connection for closing an electrical circuit.” The Illustrated Dictionary of Electronics, Seventh Edition, Stan Gibilisco (Editor), defines *terminal* as “1. A connection point at . . . an intermediate point of a device, or a point at which a voltage is to be applied. 2. A metal tab or lug attached to the end of a lead for connection purposes.” Finally, in considering the classification of “terminal blocks” for use in connecting telecommunication equipment circuits inside buildings, HQ 966674, dated March 23, 2004, cited the Merriam-Webster Online Dictionary in determining that a terminal was a device attached to the end of a wire or cable or to an electrical apparatus for convenience in making connections, and that terminal blocks secured two or more wires together to set up a circuit. The ruling concluded that when used with telecommunication equipment terminal blocks were devices for connecting electrical circuits together. These sources define devices that provide a connection between or in electrical circuits or systems that allows current or energy to be transferred.

Used with an EDS, one end of the alligator clip attaches an electrical lead wire to a wrist band worn by an assembler/technician with the other end attached to the serrated jaws which clip to the assembly table. Electrostatic energy the technician generates passes from him through the alligator clip to the table, then to ground, bypassing and preventing damage to the electrical components being assembled. An electrocardiogram is a test that records the electrical activity of the heart. In such uses, an electrical lead wire runs from one end of the alligator clip to the ECG machine while the other end attaches to a small tab electrode temporarily attached to the arms, legs and chest of the patient undergoing cardiac testing. The rate and regularity of heartbeats as well as the size and position of the heart’s chambers, in the form of low level electrical impulses, passes through the lead wire via the alligator clip to the ECG monitor, thus completing the circuit and permitting the impulses to be viewed. Finally, in testing and measurement equipment, an electrical lead wire attaches from one end of the alligator clip to testing devices such as an oscilloscope or multimeter. The serrated jaws on the other end attach to a capacitor, transistor or semiconductor device. The electrical property being tested, in the form of low level impulses, travels into the testing machine through the lead wire via the alligator clip. In each of these uses, the alligator clip functions to connect two systems together or to make connections in a circuit so that energy or current can flow from one to the other. We conclude that alligator clips are within the common and commercial meaning of the term “terminal” as discussed above. Therefore, the alligator clips are classifiable as terminals, in subheading 8536.90.40, HTSUS.

**HOLDING:**

Under the authority of GRI 1 and GRI 6, the alligator clips, as described, are provided for in heading 8536 as electrical apparatus for making connec-

tions to or in electrical circuits. They are classifiable in subheading 8536.90.4000, HTSUSA.

**EFFECT ON OTHER RULINGS:**

NY C81069, dated November 19, 1997, is modified as to the alligator clips.

MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*



[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

**HQ 968094**  
**CLA-2 RR:CTF:TCM 968094 JAS**  
**CATEGORY:** Classification  
**TARIFF NO.:** 8536.90.4000

MR. MICHAEL J. HUEGEL  
FASTENAL COMPANY  
*2001 Theurer Boulevard*  
*Winona, MN 55987*

**RE:** Alligator Clips; NY F87872 Revoked

DEAR MR. HUEGEL:

In NY F87872, which the Director, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York, issued to you on June 30, 2000, an "alligator" type clip was found to be classifiable as other electrical apparatus for making connections to or in electrical circuits, for a voltage not exceeding 1,000 V, in subheading 8536.90.8085, Harmonized Tariff Schedule of the United States Annotated (HTSUSA). We have reconsidered this classification and now believe that it is incorrect.

**FACTS:**

The "alligator" type clip was described in NY F87872 as an electrical clip, part number 0702083, used to make an electrical connection. One end is a receptacle for an electric wire and the other end, capable of opening via a built-in spring mechanism, attaches to an electrical device in order to complete a circuit. The intended service application or applications of the devices is not indicated. It is noted that some alligator clips are merely mechanical devices for attaching one thing to another as, for example, affixing one's bib in the dentist's office. However, the ones in NY F87872 are for making electrical connections. Among other things, devices of this type are commonly used with electrostatic discharge systems (EDS), electrocardiogram (ECG) equipment and test and measurement (T&M) systems.

The HTSUS provisions under consideration are as follows:

- 8536** Electrical apparatus for switching or for protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes,) for a voltage not exceeding 1,000 V:
- 8536.90** Other apparatus:
- 8536.90.40** Terminals, electrical splices and electrical couplings; wafer probers
- 8536.90.80** Other

**ISSUE:**

Whether the “alligator” type clip, part 0702083, is a terminal of subheading 8536.90.40.

**LAW AND ANALYSIS:**

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 6 states, in part, that the classification of goods in the subheadings of a heading is to be according to the terms of those subheadings and any relative section and chapter notes and, by appropriate substitution of terms, to Rules 1 through 5, and that only subheadings at the same level are comparable.

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

In reviewing the classification of this merchandise, alligator or alligator-type clips qualify under heading 8536 as electrical apparatus for making connections to or in electrical circuits. However, it now appears the issue of whether they might be terminals of the type classifiable in subheading 8536.90.40, HTSUS, was not given sufficient consideration. As the term “terminal” is not defined in the HTSUS, nor described by any relevant EN, it is to be classified according to the common and commercial meaning of the term, as derived from electronics dictionaries and dictionaries of scientific and technical terms, as well as other authoritative lexicons. Brown Boveri Corp. v. United States, 53 CCPA 19, 23, C.A.D. 870 (1966), and THK America, Inc. v. United States, 17 C.I.T. 1169, 837 F. Supp. 427 (Ct. Int’l Trade, decided November 1, 1993). Thus, if the alligator clips are found to be “terminals” for tariff purposes, subheading 8536.90.40, HTSUS, would more specifically describe the merchandise than subheading 8536.90.80, HTSUS, and would prevail over that provision.

First of all, it is only those alligator clips that are configured for electrical connection, that are at issue here. In this regard, The Modern Dictionary of Electronics, Seventh Edition, Rudolf F. Graf (Editor), defines the term *alli-*

*gator clip* as a “spring loaded metal clip . . . used for making temporary electrical connections, generally at the end of a test lead on interconnection wire.” The same source defines *terminal* as “1. A point of connection for two or more conductors in an electrical circuit. 2. A device attached to a conductor to facilitate connection with another conductor. Webster’s New Universal Dictionary (Unabridged) defines *alligator clip* as “*Elect.* A type of terminal for making temporary electrical connections, consisting of a clip-like device. . . .” The New Oxford American Dictionary (2d Edition), defines *terminal* as “n. 2 a point of connection for closing an electrical circuit.” The Illustrated Dictionary of Electronics, Seventh Edition, Stan Gibilisco (Editor), defines *terminal* as “1. A connection point at . . . an intermediate point of a device, or a point at which a voltage is to be applied. 2. A metal tab or lug attached to the end of a lead for connection purposes.” Finally, in considering the classification of “terminal blocks” for use in connecting telecommunication equipment circuits inside buildings, HQ 966674, dated March 23, 2004, cited the Merriam-Webster Online Dictionary in determining that a terminal was a device attached to the end of a wire or cable or to an electrical apparatus for convenience in making connections, and that terminal blocks secured two or more wires together to set up a circuit. The ruling concluded that when used with telecommunication equipment terminal blocks were devices for connecting electrical circuits together. These sources define devices that provide a connection between or in electrical circuits or systems that allows current or energy to be transferred.

Used with an EDS, one end of the alligator clip attaches an electrical lead wire to a wrist band worn by an assembler/technician with the other end attached to the serrated jaws which clip to the assembly table. Electrostatic energy the technician generates passes from him through the alligator clip to the table, then to ground, bypassing and preventing damage to the electrical components being assembled. An electrocardiogram is a test that records the electrical activity of the heart. In such uses, an electrical lead wire runs from one end of the alligator clip to the ECG machine while the other end attaches to a small tab electrode temporarily attached to the arms, legs and chest of the patient undergoing cardiac testing. The rate and regularity of heartbeats as well as the size and position of the heart’s chambers, in the form of low level electrical impulses, passes through the lead wire via the alligator clip to the ECG monitor, thus completing the circuit and permitting the impulses to be viewed on a monitor. Finally, in T&M equipment, an electrical lead wire attaches from one end of the alligator clip to testing devices such as an oscilloscope or multimeter. The serrated jaws on the other end attach to a capacitor, transistor or semiconductor device. The electrical property being tested, in the form of low level impulses, travels into the testing machine through the lead wire via the alligator clip. In each of these uses, the alligator clip functions to connect two systems together or to make connections in a circuit so that energy or current can flow from one to the other. We conclude, therefore, that alligator clips are within the common and commercial meaning of the term “terminal” as discussed above. Therefore, the alligator clips are classifiable as terminals, in sub-heading 8536.90.40, HTSUS.

**HOLDING:**

Under the authority of GRI 1 and GRI 6, the alligator clips, as described, are provided for in heading 8536 as electrical apparatus for making connec-

tions to or in electrical circuits. They are classifiable in subheading 8536.90.4000, HTSUSA.

**EFFECT ON OTHER RULINGS:**

NY F87872, dated June 30, 2000, is revoked.

MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

**19 CFR PART 177**

**REVOCAION OF THREE RULING LETTERS,  
MODIFICATION OF TWO RULING LETTERS AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF PLASTIC RUBBING  
TEMPLATES**

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

**ACTION:** Notice of revocation of three ruling letters and treatment relating to tariff classification of plastic rubbing templates.

**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 and Border Protection ("CBP") is revoking three ruling letters and modifying two ruling letters pertaining to the tariff classification of plastic rubbing templates under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed actions was published in the Customs Bulletin on November 16, 2005. One comment was received in response to the notice.

**EFFECTIVE DATE:** This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after May 14, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ieva O'Rourke, Tariff Classification and Marking Branch, (202) 572-8803.

**SUPPLEMENTARY INFORMATION:**

## Background

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

Pursuant to section 625(c)(1), Tariff Act of 1930, (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin on November 16, 2005, proposing to revoke Headquarters Ruling Letter (HQ) 952413, dated February 17, 1993, New York Ruling Letter (NY) J88507, dated October 6, 2003, NY 885655, dated June 4, 1993, and modify NY G88117, dated March 27, 2001, and NY 811162, dated June 20, 1995, which involved plastic rubbing templates. One comment was received against the proposed actions, which will be addressed in the attached rulings. In addition, the attached rulings correctly reflect that there is no exception for role play for the type of merchandise which is the subject of the rulings. As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to those 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 CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP is revoking any treatment it previously accorded to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer's failure to advise

CBP 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 subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 952413, NY J88507, and NY 885655, and modifying NY G88117, and NY 811162, to reflect the proper classification of plastic rubbing templates in subheading 3926.90.98, HTSUS, as “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other,” in accordance with the analysis set forth in HQ 967800 (Attachment A), HQ 967797 (Attachment B), HQ 967798 (Attachment C), HQ 967796 (Attachment D), and HQ 967799 (Attachment E). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP 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 28, 2006

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967800  
FEBRUARY 28, 2006  
CLA-2-RR:CTF:TCM 967800 IOR  
CATEGORY: Classification  
Tariff No. 3926.90.9880

JERROLD E. ANDERSON, ESQ.  
KATTEN, MUCHIN & ZAVIS  
525 West Monroe St.  
Suite 1600  
Chicago, IL 60661-3693

Re: Rubbing Templates; HQ 952413 revoked

DEAR MR. ANDERSON:

In HQ 952413, which Headquarters, Customs and Border Protection (CBP), issued to you on February 17, 1993, on behalf of M-B Sales, “Rub ‘N’ Draw templates” were found to be classifiable as other toys . . . (except models), not having a spring mechanism, in subheading 9503.90.60 (now

9503.90.00), Harmonized Tariff Schedule of the United States (HTSUS). HQ 952413 is incorrect and no longer represents the position of CBP on the classification of this merchandise.

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 HQ 952413 was published on November 16, 2005, in the *Customs Bulletin*, Volume 39, Number 47. One comment was received in response to that notice, opposing the proposed revocation. Relevant portions of the comment are discussed in the Law and Analysis section of this ruling.

**FACTS:**

In HQ 952413, the facts were stated as follows:

The articles at issue are six flat pieces of hard plastic, each measuring approximately 3 inches by 2 inches, and having various raised designs (of animals, scenery, celestial bodies, musical instruments, etc.) on their tops and bottoms. Whether joined together or placed individually on a hard surface, the “templates” are used by placing paper over them, then coloring the paper with a pencil or crayon in a random hand motion to produce a picture or design.

**ISSUE:**

What is the classification of the “Rub ‘N’ Draw templates” under the HTSUS.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other .....
9017	Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof:
9017.20	Other drawing, marking-out or mathematical calculating instruments:
9017.20.80	Other .....



9503 Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:

9503.90.00 Other . . . . .

The issue before us is whether the subject rubbing templates are toys. Articles of Chapter 95, HTSUS, are not classifiable in Chapter 39, or 90, HTSUS. See Note 2(v), Chapter 39 and Note 1(k), Chapter 90. In HQ 952413 we stated that the rubbing templates were designed to amuse children and thus classified as a toy in heading 9503, HTSUS. In HQ 952413 we determined that the templates were more accurately described as toys than drawing instruments of heading 9017, HTSUS.

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

The General EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." The U.S. Court of International Trade (CIT) construes heading 9503, HTSUS, as a "principal use" provision, insofar as it pertains to "toys." *See Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (CIT 2000). Thus, to be a toy, the "character of amusement involved [is] that derived from an item which is essentially a plaything." *Wilson's Customs Clearance, Inc. v. United States*, 59 Cust. Ct. 36, C.D. 3061 (1967). It has been CBP's position that the amusement requirement means that toys should be designed and used principally for amusement.

For articles governed by principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use "is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use." In other words, the article's principal use at the time of importation determines whether it is classifiable within a particular class or kind.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the CIT has provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. *See United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. Denied, 429 U.S. 979 (hereinafter *Carborundum*).

For articles that are both amusing and functional, we look to *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28 (1977), in which the court stated that "when amusement and utility become locked in controversy, the question be-

comes one of determining whether amusement is incidental to the utilitarian purpose, or whether the utility purpose is incidental to the amusement.” Drawing and coloring are activities capable of providing amusement, but the Ens exclude from heading 9503, HTSUS, many articles that are used in drawing, coloring and other art activities. EN 95.03 states, in part, that heading 9503 excludes:

- (a) Paints put up for children’s use (heading 32.13).
- (b) Modelling pastes put up for children’s amusement (heading 34.07).
- (c) Children’s picture, drawing or colouring books of heading 49.03.
- (d) Transfers (heading 49.08).
- ...
- (h) Crayons and pastels for children’s use, of heading 96.09.
- (ij) Slates and blackboards, of heading 96.10.

These exclusions provide that articles and sets comprised of articles used for drawing or coloring are not classifiable as toys or as toy sets (classified according to GRI 1 under subheading 9503.70.00). The fact that the drafters of the Harmonized System upon which the US tariff schedule is based provided for the above-listed articles eo ominee in headings other than heading 9503, HTSUS, evinces an intent by the drafters that they not be considered toys. To that end, CBP has long construed the scope of heading 9503, HTSUS, to exclude such articles and sets. In HQ 085267, dated May 9, 1990, CBP found that, with respect to the above items listed in the Ens, “[a]lthough they may tend to amuse those who use them, such amusement is incidental to their primary purpose.” That is, not all merchandise that provides amusement is properly classified in a toy provision. The listed items were further described as having primarily a drawing and craft function.

CBP has never considered writing, coloring, drawing or painting to have significant “manipulative play value,” for purposes of classification as a toy. Nor does CBP classify the tools for writing, coloring, drawing or painting as toys since those tools are not designed to amuse. *See* HQ 966198, dated July 21, 2003 (ruling that a plastic stencil depicting a farm and farm animals is not a toy but a stencil designed to create tracings of a farm and farm animals); HQ 959189, dated September 25, 1996 (plastic stencils were designed primarily to make decorations, not to provide amusement); HQ 958063, dated February 13, 1996 (classifying a battery-operated drawing pad with pen for children as a drawing instrument of heading 9017 and not a toy because it was designed to facilitate drawing, not to amuse); HQ 953922, dated November 17, 1993 (classifying the “Video Painter” and “Design Studio Accessory Kit,” which included several stencils under heading 9017 for the same reason); HQ 962327, dated June 23, 2000, (articles in an art activity set were not put up in a form indicating their use as toys and thus the set was not classifiable as a toy set at GRI 1, and the individual items were not classifiable as toys, including a stencil); HQ 958152, dated April 2, 1996 (classifying light-up desk with designs for tracing as a drawing instrument) and HQ 958805, dated February 8, 1996 (classifying “Trace N’ Color” in heading 9017).

The commenter asserts that the above statement that “CBP has never considered writing, coloring, drawing or painting to have significant ‘manipulative play value,’ for purposes of classification as a toy,” is opposed to, and refuted by language in HQ 086407, dated March 22, 1990. HQ 086407 was affirmed by HQ 087441, dated January 8, 1991. In HQ 086407 and HQ

087441, the articles being classified were an "Arts, Crafts & Activities" kit, and a string art kit, which were classified under subheading 9503.70.80, HTSUS. The kits in issue in HQ 086407 and HQ 087441, were not limited to writing, coloring, drawing, or painting related items, but included, among other items, double sided game boards, playing pieces and dice, string art materials, as well as paints, brushes and an instruction manual, in one kit and string art with no writing, coloring, drawing or painting related items in the other kit. As the kits included a variety of articles not related to writing, coloring, drawing, or painting, the decision does not stand for the proposition that writing, coloring, drawing or painting, by themselves, have significant play value for purposes of classification as a toy. Although we do not find HQ 086407 and HQ 087441 dispositive with regard to the classification of plastic rubbing templates, or other items packaged with plastic rubbing templates, we do intend to evaluate them in the near future to determine whether the items at issue were correctly classified under heading 9503 as "other toys."

The commenter asserts that the EN exclusions do not apply to the rubbing templates, as they are not specifically identified in the exclusions. The EN cannot limit the scope of a heading but does provide guidance. It is CBP's position that from the EN, it may be inferred that other implements designed to facilitate drawing, and not amusement, are also excluded. *See*, HQ 958063, dated February 13, 1996.

The activity performed with the rubbing template is similar to that performed with a stencil or by tracing. It involves following a design pattern to create a design which can be then colored.

The amusement derived from art-related activities is secondary to utility because those articles and sets used for drawing, coloring and other art-related activities are not "essentially playthings." The articles are not designed to amuse, but "rather are designed to facilitate some kind of art or drawing activity." *See* HQ 962327, *supra*.

For purposes of determining whether the rubbing templates fall within the class or kind of merchandise as toys, we apply the Carborundum factors as follows:

The general physical characteristics of a rubbing template is hard plastic with a raised design on each side of the plastic to be used for creating designs with crayons or pencils.

The expectation of the ultimate purchaser is to create the designs on the rubbing templates by using crayons and pencils.

We do not have information regarding the channels of trade.

Regarding the environment of sale (accompanying accessories, manner of advertisement and display), the instructions on use for the rubbing templates describe how "to create a picture." We do not have information on the manner of advertisement or display.

The use is not the same as toys because the use is creating designs by use of the rubbing templates.

The economic practicality of using the templates for the creation of designs is clear, and it is unlikely any other use is recognized by the trade.

The foregoing application of the Carborundum criteria indicates that the rubbing templates are not goods of a kind designed for amusement, and therefore the principal use of the rubbing templates is not amusement.

The commenter compares the rubbing templates to “Super Egg Putty,” jacks, and jump ropes, which have been classified as toys within heading 9503, HTSUS, as opposed to articles of plastic, metal or other component materials. The commenter states that the items, like the rubbing templates, provide amusement in their use, warranting classification as toys. Unlike the other articles however, the rubbing templates, have the utilitarian purpose of creating designs, while the “Super Egg Putty” and jump ropes appear to be designed for amusement, and not some utilitarian purpose. Contrary to the comment, jacks have been classified in heading 9504, HTSUS as “Articles for arcade, table or parlor games. . . .” See *e.g.* NY C89031, dated June 26, 1998.

In HQ 952413, *supra*, we concluded that the rubbing templates were similar in character to a “Stencils and Pencils” set that had been classified as a toy as opposed to a drawing instrument, in HQ 950926, dated March 31, 1992. HQ 966197, dated July 21, 2003, revoked HQ 950926, concluding that the subject set was not designed for amusement, but had the essential character of the stencil, a drawing instrument, classified in heading 9017, HTSUS.

With respect to the rubbing templates, we do not find they are classified in heading 9017, HTSUS. The items in heading 9017, include among drawing instruments 1) pantographs and eidographs, 2) drafting machines, 3) drawing compasses, dividers, reduction compasses, spring bows, mathematical drawing pens, dotting wheels, etc., 4) set squares, adjustable squares, T squares, drawing curves, rulers, 5) protractors, and 6) stencils. In HQ 952413, we stated that templates and stencils have similar definitions, however the subject rubbing templates did not “precisely” fit the definition of a template. In HQ 952413, a “template” was defined as “a pattern, mold, or the like, usually consisting of a thin plate of wood or metal, serving as a gauge or guide in mechanical work.” We find that the rubbing templates at issue do not fit the definition of the type of template that is similar to a stencil.

The “Rub ‘N’ Draw templates” rubbing templates are articles made of plastics. Articles of plastics are classified in Chapter 39, HTSUS. As no specific heading in Chapter 39 describes these articles, the “Rub ‘N’ Draw templates” rubbing templates are classified in heading 3926, HTSUS, specifically in subheading 3926.90.98, HTSUS, as “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The plastic rubbing templates are consistent with the plastic articles listed in the EN 39.26(12), such as “beads . . . , figures and letters.”

**HOLDING:**

By application of GRI 1 the “Rub ‘N’ Draw templates” rubbing templates are classified in heading 3926, specifically in subheading 3926.90.9880, HTSUSA, as “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other,” with a column one, general duty rate of 5.3% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

HQ 952413, dated February 17, 1993, is revoked.

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



[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967797  
FEBRUARY 28, 2006  
CLA-2-RR:CTF:TCM 967797 IOR  
CATEGORY: Classification  
Tariff No. 3926.90.9880

KEVIN MAHER  
C-AIR CUSTOMHOUSE BROKERS  
*181 South Franklin Avenue*  
*Valley Stream, NY 11581*

Re: Fashion Maker; Rubbing Templates; NY J88507; revoked

DEAR MR. MAHER:

On October 6, 2003, the Director, National Commodity Specialist Division issued to you, on behalf of RoseArt, New York Ruling Letter (NY) J88507, classifying a "Fashion Maker" under the Harmonized Tariff Schedule of the United States (HTSUS). The "Fashion Maker," which included plastic rubbing templates, was classified as a toy set under subheading 9503.70.00, HTSUS. We have reconsidered NY J88507 and have determined the classification of the "Fashion Maker" to be incorrect.

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 J88507 was published on November 16, 2005, in the *Customs Bulletin*, Volume 39, Number 47. One comment was received in response to that notice, opposing the proposed revocation. Relevant portions of the comment are discussed in the Law and Analysis section of this ruling.

**FACTS:**

In NY J88507, the "Fashion Maker," identified as style number 4740, was described as follows:

The toy set consists of 12 plastic plates with 24 images, 14 colored pencils, 1 crayon with holder, and paper packaged together in a cardboard box with a window display. To use, a child 5 years of age and older places a sheet of paper over a plastic plate. The plate depicts an image of a face, a torso, arms, legs, a handbag, a flower, etc. The plate is then placed inside the plastic frame, which holds the paper in place so the

paper does not move as the child rubs the paper with the crayon. This rubbing action transfers the image on the plate to the paper. By mixing and matching the various plates, a child can create dozens of figures wearing various designs. The pencils are used to add additional colors to the finished design. All of the articles work together for the use of a child in imaginative role-play as a fashion designer “creating” dozens of their own fashions.

As is apparent from the description above, the “Fashion Maker” also includes a plastic frame.

**ISSUE:**

What is the classification of the “Fashion Maker” under the HTSUS.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other .....
9017	Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof:
9017.20	Other drawing, marking-out or mathematical calculating instruments:
9017.20.80	Other .....
9503	Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90.00	Other .....

The issue before us is whether the “Fashion Maker” is classifiable within heading 9503, HTSUS as other toys, or whether it is classifiable as a set elsewhere. Articles of Chapter 95, HTSUS, are not classifiable in Chapter 39, or 90, HTSUS. See Note 2(v), Chapter 39 and Note 1(k), Chapter 90. In NY J88507 we concluded that the articles “work together for the use of a child in imaginative role-play as a fashion designer,” and classified it as

“[o]ther toys, put up in sets or outfits, and parts and accessories thereof,” in subheading 9503.70, HTSUS.

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

The General EN for Chapter 95 states that the “Chapter covers toys of all kinds whether designed for the amusement of children or adults.” The U.S. Court of International Trade (CIT) construes heading 9503, HTSUS, as a “principal use” provision, insofar as it pertains to “toys.” *See Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (CIT 2000). Thus, to be a toy, the “character of amusement involved [is] that derived from an item which is essentially a plaything.” *Wilson’s Customs Clearance, Inc. v. United States*, 59 Cust. Ct. 36, C.D. 3061 (1967). It has been CBP’s position that the amusement requirement means that toys should be designed and used principally for amusement.

For articles governed by principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use “is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.” In other words, the article’s principal use at the time of importation determines whether it is classifiable within a particular class or kind.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the CIT has provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. *See United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter *Carborundum*).

For articles that are both amusing and functional, we look to *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28 (1977), in which the court stated that “when amusement and utility become locked in controversy, the question becomes one of determining whether amusement is incidental to the utilitarian purpose, or whether the utility purpose is incidental to the amusement.” Drawing and coloring are activities capable of providing amusement, but the ENs exclude from heading 9503, HTSUS, many articles that are used in drawing, coloring and other art activities. EN 95.03 states, in part, that heading 9503 excludes:

- (a) Paints put up for children’s use (heading 32.13).
- (b) Modelling pastes put up for children’s amusement (heading 34.07).
- (c) Children’s picture, drawing or colouring books of heading 49.03.

(d) Transfers (heading 49.08).

(h) Crayons and pastels for children's use, of heading 96.09.

(ij) Slates and blackboards, of heading 96.10.

These exclusions provide that articles and sets comprised of articles used for drawing or coloring are not classifiable as toys or as toy sets (classified according to GRI 1 under subheading 9503.70.00). The fact that the drafters of the Harmonized System upon which the U.S. tariff schedule is based provided for the above-listed articles *eo nomine* in headings other than heading 9503, HTSUS, evinces an intent by the drafters that they not be considered toys. To that end, CBP has long construed the scope of heading 9503, HTSUS, to exclude such articles and sets. In HQ 085267, dated May 9, 1990, CBP found that, with respect to the above items listed in the ENs, "[a]lthough they may tend to amuse those who use them, such amusement is incidental to their primary purpose." That is, not all merchandise that provides amusement is properly classified in a toy provision. The listed items were further described as having primarily a drawing and craft function.

CBP has never considered writing, coloring, drawing or painting to have significant "manipulative play value," for purposes of classification as a toy. Nor does CBP classify the tools for writing, coloring, drawing or painting as toys since those tools are not designed to amuse. *See* HQ 966198, dated July 21, 2003 (ruling that a plastic stencil depicting a farm and farm animals is not a toy but a stencil designed to create tracings of a farm and farm animals); HQ 959189, dated September 25, 1996 (plastic stencils were designed primarily to make decorations, not to provide amusement); HQ 958063, dated February 13, 1996 (classifying a battery-operated drawing pad with pen for children as a drawing instrument of heading 9017 and not a toy because it was designed to facilitate drawing, not to amuse); HQ 953922, dated November 17, 1993 (classifying the "Video Painter" and "Design Studio Accessory Kit," which included several stencils under heading 9017 for the same reason); HQ 962327, dated June 23, 2000, (articles in an art activity set were not put up in a form indicating their use as toys and thus the set was not classifiable as a toy set at GRI 1, and the individual items were not classifiable as toys, including a stencil); HQ 958152, dated April 2, 1996 (classifying light-up desk with designs for tracing as a drawing instrument) and HQ 958805, dated February 8, 1996 (classifying "Trace N' Color" in heading 9017).

The commenter asserts that the above statement that "CBP has never considered writing, coloring, drawing or painting to have significant 'manipulative play value,' for purposes of classification as a toy," is opposed to, and refuted by language in HQ 086407, dated March 22, 1990. HQ 086407 was affirmed by HQ 087441, dated January 8, 1991. In HQ 086407 and HQ 087441, the articles being classified were an "Arts, Crafts & Activities" kit, and a string art kit, which were classified under subheading 9503.70.80, HTSUS. The kits in issue in HQ 086407 and HQ 087441, were not limited to writing, coloring, drawing, or painting related items, but included, among other items, double sided game boards, playing pieces and dice, string art materials, as well as paints, brushes and an instruction manual, in one kit and string art with no writing, coloring, drawing or painting related items in the other kit. As the kits included a variety of articles not related to writing, coloring, drawing, or painting, the decision does not stand for the proposition that writing, coloring, drawing or painting, by themselves, have signifi-



cant play value for purposes of classification as a toy. Although we do not find HQ 086407 and HQ 087441 dispositive with regard to the classification of plastic rubbing templates, or other items packaged with plastic rubbing templates, we do intend to evaluate them in the near future to determine whether the items at issue were correctly classified under heading 9503 as "other toys."

The commenter asserts that the EN exclusions do not apply to the rubbing templates, as they are not specifically identified in the exclusions. The EN cannot limit the scope of a heading but does provide guidance. It is CBP's position that from the EN, it may be inferred that other implements designed to facilitate drawing, and not amusement, are also excluded. *See*, HQ 958063, dated February 13, 1996.

The activity performed with the rubbing template is similar to that performed with a stencil or by tracing. It involves following a design pattern to create a design which can be then colored.

The amusement derived from art-related activities is secondary to utility because those articles and sets used for drawing, coloring and other art-related activities are not "essentially playthings." The articles are not designed to amuse, but "rather are designed to facilitate some kind of art or drawing activity." *See* HQ 962327, *supra*. In certain cases, combinations of articles not ordinarily classifiable as toys, but intended primarily for use in role play, have been determined to be classifiable as toys in heading 9503, HTSUS. *See e.g.*, HQ 958344, dated October 2, 1997. Where the set is entirely composed of articles which are excluded from classification in heading 9503, HTSUS, as articles used for art-related activities, and the art-related activity is the primary purpose of the set, as in the instant case, we do not find the item to be primarily for role play.

For purposes of determining whether the "Fashion Maker" falls within the class or kind of merchandise as toys, we apply the Carborundum factors as follows:

The general physical characteristics of the "Fashion Maker" is a plastic rubbing template with a raised design to be placed under paper in a frame and used for creating designs with crayons or pencils.

The expectation of the ultimate purchaser is to create the designs on the rubbing templates by using crayons and pencils.

We do not have information regarding the channels of trade.

We do not have any information regarding the environment of sale (accompanying accessories, manner of advertisement and display).

The use is not the same as toys because the use is creating designs by use of the rubbing template.

The economic practicality of using the articles for the creation of designs is clear, and it is unlikely any other use is recognized by the trade.

The foregoing application of the Carborundum criteria indicates that the "Fashion Maker" is not a good of a kind designed for amusement, and therefore the principal use of the "Fashion Maker" is not amusement, and it is not classified in heading 9503, HTSUS.

The subheading EN for subheading 9503.70 provides:

Subject to substantiated classification in heading 95.03 and for the purpose of this subheading:

- (i) "Sets" are two or more different types of articles (principally for amusement), put up in the same packing for retail sale without repacking. Simple accessories or objects of minor importance intended to facilitate the use of the articles may also be included.
- (ii) "Outfits" are two or more different articles put up in the same packing for retail sale without repacking, specific to a particular type of recreation, work, person or profession.

The subheading EN is subject to substantiated classification in heading 95.03. In this case, because the articles within the set consist of articles for art-related activities, articles excluded from heading 9503, HTSUS, classification in the heading has not been substantiated.

The commenter asserts that subheading 9503.70 is an *eo nomine* provision, and that goods may be classified therein pursuant to GRI 1, and that recourse to GRI 3 is unnecessary. While we agree that goods may be classified in subheading 9503.70, HTSUS by application of GRI 1, without recourse to GRI 3, we do not agree that subheading 9503.70 is an *eo nomine* provision. As explained above, and to clarify our conclusion, we do not find that the article at issue is designed for amusement, and therefore classification in the heading is not substantiated. *See* HQ 962327, dated June 23, 2000, in which it was determined that none of the items in an Adventure in Art Travel Pack were toys in their own right, and that nothing in the way the goods were put together made them a toy as opposed to the art and drawing materials which they are on their own, and as such they did not constitute a toy put up in a set. The next issue to be determined was whether they constituted a GRI 3(b) set outside of heading 9503, HTSUS. Because we have concluded that the subject article is not under heading 9503, HTSUS, as a set or otherwise, we also turn to GRI 3(b) to determine whether the article can be classified as a set under any other provision of the HTSUS.

The commenter cites to HQ 087441, dated January 8, 1991, which affirmed HQ 086407, *supra*, as supporting classification of art sets or kits under subheading 9503.70, HTSUS. Under HQ 087441, a prerequisite of classification in subheading 9503.70, HTSUS, is that the articles must be put up for use as a toy. Neither of the articles at issue in HQ 087441, were limited to drawing type of activities, such as in the instant article. Nothing about the instant article suggests any amusement other than that inherent in drawing and coloring. *See e.g.* HQ 962327, *supra*.

The commenter cites to HQ 086330, dated May 14, 1990, HQ 958361, dated July 3, 1996, and HQ 960067, dated March 24, 1998, all of which pertain to sets consisting of pens and plastic rings, intended to create spiral designs on paper. These were determined to be classified in subheading 9503.70, HTSUS. CBP finds the spiral drawing kits distinguishable from the rubbing template kits in issue, in that the spiral drawing kits are educational as to how mechanical things work, and require specific manipulation to the extent that gears combined with motion are involved.

The commenter compares the rubbing templates to "Super Egg Putty," jacks, and jump ropes, which have been classified as toys within heading 9503, HTSUS, as opposed to articles of plastic, metal or other component materials. The commenter states that the items, like the rubbing templates, provide amusement in their use, warranting classification as toys. Unlike the other articles however, the rubbing templates, have the utilitarian pur-

pose of creating designs, while the “Super Egg Putty” and jump ropes appear to be designed for amusement, and not some utilitarian purpose. Contrary to the comment, jacks have been classified in heading 9504, HTSUS as “Articles for arcade, table or parlor games. . . .” See *e.g.* NY C89031, dated June 26, 1998.

In HQ 952413, dated February 17, 1993, we had concluded that similar rubbing templates, were similar in character to the stencils in a “Stencils and Pencils” set that had been classified as a toy as opposed to a drawing instrument, in HQ 950926, dated March 31, 1992. HQ 966197, dated July 21, 2003, revoked HQ 950926, concluding that the subject set was not designed for amusement, but had the essential character of the stencil, a drawing instrument, classified in heading 9017, HTSUS.

With respect to the rubbing templates, we do not find they are classified in heading 9017, HTSUS. The ENs to heading 9017, include among drawing instruments 1) pantographs and eidographs, 2) drafting machines, 3) drawing compasses, dividers, reduction compasses, spring bows, mathematical drawing pens, dotting wheels, etc., 4) set squares, adjustable squares, T squares, drawing curves, rulers, 5) protractors, and 6) stencils. In HQ 952413, *supra*, we stated that templates and stencils have similar definitions, however in that case found that the subject rubbing templates did not “precisely” fit the definition of a template. In HQ 952413, a “template” was defined as “a pattern, mold, or the like, usually consisting of a thin plate of wood or metal, serving as a gauge or guide in mechanical work.” We find that the rubbing templates at issue do not fit the definition of the type of template that is similar to a stencil, and are not described in heading 9017, HTSUS.

We find that the rubbing templates within the “Fashion Maker” are classified in heading 3926, HTSUS, specifically in subheading 3926.90.98, HTSUS, as “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.”

No single heading covers the subject “Fashion Maker” which consists of several different articles, therefore classification must be accomplished by other than GRI 1. Goods that are, *prima facie*, classifiable under two or more headings, are classifiable in accordance with GRI 3. GRI 3(a) states in part that when two or more headings each refer to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific, even if one heading gives a more precise description of the goods.

GRI 3(b) states, in relevant part, that goods put up in sets for retail sale shall be classified as if consisting of the material or component which gives them their essential character, insofar as this criterion is applicable. Explanatory Note (X) to GRI 3(b), on p. 5 (2002) states that for purposes of Rule 3(b) the term “goods put up in sets for retail sale” means goods which: (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and, (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The subject merchandise consists of 12 plastic rubbing templates with 24 images, 14 colored pencils, 1 crayon with holder, a plastic frame, and paper, all packaged together in a box. The items are *prima facie* classifiable in more than two different headings. The items packaged together, consist of articles put up together to carry out the specific activity of creating images

on paper. The articles are put up in a manner suitable for sale directly to users without repacking. Therefore the kit in question is within the term "goods put up in sets for retail sale." GRI 3(b) states in part that goods put up in sets for retail sale, which cannot be classified by reference to 3(a), are to be classified as if they consisted of the component which gives them their essential character.

The factor or factors which determine essential character will vary with the goods. EN Rule 3(b)(VIII) lists as factors the nature of the material or component, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods. In this case, we find that the rubbing templates, for purposes of GRI 3(b), impart the essential character of the set as they provide the designs to be drawn, the motif, and comprise the bulk of the set. *See* EN VIII, GRI 3(b); *see also* Better Home Plastics Corp. v. U.S., 916 F. Supp. 1265 (CIT 1996), *aff'd* 119 F. 3d 969 (Fed. Cir. 1997).

Because the rubbing templates impart the essential character of the "Fashion Maker" set, they control the classification of the set. The rubbing templates are articles made of plastics. Articles of plastics are classified in Chapter 39, HTSUS. As no specific heading in Chapter 39 describes these articles, the rubbing templates are classified in heading 3926, HTSUS, specifically in subheading 3926.90.98, HTSUS, as "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other." The plastic rubbing templates are consistent with the plastic articles listed in the EN 39.26(12), such as "beads . . . , figures and letters."

**HOLDING:**

By application of GRI 3(b), the "Fashion Maker," is classified in heading 3926, specifically subheading 3926.90.9880, HTSUSA, as "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other," with a column one, general duty rate of 5.3% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY J88507, dated October 6, 2003, is hereby revoked.

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

## [ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967798  
FEBRUARY 28, 2006  
CLA-2-RR:CTF:TCM 967798 IOR  
CATEGORY: Classification  
Tariff No. 3926.90.9880

MAUREEN SHOULE  
J.W. HAMPTON, JR. & Co.  
15 Park Row  
New York, NY 10038

Re: Rubbing Template Sets; NY 885655; revoked

DEAR MS. SHOULE:

On June 4, 1993, this office issued to you, on behalf of F.W. Woolworth, Co., New York (NY) 885655, classifying "Cyborg Body Works" and "Fashion Designer Portfolio Drawing Set" under the Harmonized Tariff Schedule of the United States (HTSUS). The products, which included plastic rubbing templates, were classified as toy sets under subheading 9503.70.80 (now 9503.70.00), HTSUS. We have reconsidered NY 885655 and have determined the classification of the sets to be incorrect.

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 885655 was published on November 16, 2005, in the *Customs Bulletin*, Volume 39, Number 47. One comment was received in response to that notice, opposing the proposed revocation. Relevant portions of the comment are discussed in the Law and Analysis section of this ruling.

**FACTS:**

In NY 885655, the articles were described as follows:

The two samples submitted with your inquiry, "Cyborg Body Works" and "Fashion Designer Portfolio Drawing Set", are identified by item number 8090. The first product "Cyborg Body Works" consists of 12 double-sided, plastic templates, 12 colored pencils, 2 crayons, paper and a plastic holder. The plates come in sizes less than 4 1/2 by 3 1/2 inches. They have various raised designs on both sides. The holder measures 9 1/2 by 6 inches and, in addition to serving as a storage case for the templates and crayons, serves as a work area for coloring. The holder functions by placing a piece of paper over the template and inserting both under a plastic frame. The frame holds all items in place and by rubbing a crayon over the paper an outline of the desired picture is obtained. With the outline established the template may be removed and the child may color the picture. Both items are identical in nature with the only difference being in design sketches. The "Cyborg Body Works" contains various templates representing robotic like figures and the "Fashion Designer Portfolio Drawing Set" comprises illustrations depicting female figures in various wardrobe.

**ISSUE:**

What is the classification of the “Cyborg Body Works” and “Fashion Designer Portfolio Drawing Set” under the HTSUS.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other .....
9017	Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof:
9017.20	Other drawing, marking-out or mathematical calculating instruments:
9017.20.80	Other .....
9503	Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90.00	Other .....

The issue before us is whether the “Cyborg Body Works” and “Fashion Designer Portfolio Drawing Set” are classifiable within heading 9503, HTSUS as other toys, or whether they are classifiable as sets elsewhere. Articles of Chapter 95, HTSUS, are not classifiable in Chapter 39, or 90, HTSUS. *See* Note 2(v), Chapter 39 and Note 1(k), Chapter 90.

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

The General EN for Chapter 95 states that the “Chapter covers toys of all kinds whether designed for the amusement of children or adults.” The U.S. Court of International Trade (CIT) construes heading 9503, HTSUS, as a “principal use” provision, insofar as it pertains to “toys.” *See Minnetonka*

Brands v. United States, 110 F. Supp. 2d 1020, 1026 (CIT 2000). Thus, to be a toy, the “character of amusement involved [is] that derived from an item which is essentially a plaything.” Wilson’s Customs Clearance, Inc. v. United States, 59 Cust. Ct. 36, C.D. 3061 (1967). It has been CBP’s position that the amusement requirement means that toys should be designed and used principally for amusement.

For articles governed by principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use “is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.” In other words, the article’s principal use at the time of importation determines whether it is classifiable within a particular class or kind.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the CIT has provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See United States v. Carborundum Company, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter Carborundum).

For articles that are both amusing and functional, we look to Ideal Toy Corp. v United States, 78 Cust. Ct. 28 (1977), in which the court stated that “when amusement and utility become locked in controversy, the question becomes one of determining whether amusement is incidental to the utilitarian purpose, or whether the utility purpose is incidental to the amusement.” Drawing and coloring are activities capable of providing amusement, but the ENs exclude from heading 9503, HTSUS, many articles that are used in drawing, coloring and other art activities. EN 95.03 states, in part, that heading 9503 excludes:

- (a) Paints put up for children’s use (heading 32.13).
- (b) Modelling pastes put up for children’s amusement (heading 34.07).
- (c) Children’s picture, drawing or colouring books of heading 49.03.
- (d) Transfers (heading 49.08).
- ...
- (h) Crayons and pastels for children’s use, of heading 96.09.
- (ij) Slates and blackboards, of heading 96.10.

These exclusions provide that articles and sets comprised of articles used for drawing or coloring are not classifiable as toys or as toy sets (classified according to GRI 1 under subheading 9503.70.00). The fact that the drafters of the Harmonized System upon which the US tariff schedule is based provided for the above-listed articles eo nomine in headings other than heading 9503, HTSUS, evinces an intent by the drafters that they not be considered toys. To that end, CBP has long construed the scope of heading 9503, HTSUS, to exclude such articles and sets. In HQ 085267, dated May 9, 1990, CBP found that, with respect to the above items listed in the ENs, “[a]-

though they may tend to amuse those who use them, such amusement is incidental to their primary purpose.” That is, not all merchandise that provides amusement is properly classified in a toy provision. The listed items were further described as having primarily a drawing and craft function.

CBP has never considered writing, coloring, drawing or painting to have significant “manipulative play value,” for purposes of classification as a toy. Nor does CBP classify the tools for writing, coloring, drawing or painting as toys since those tools are not designed to amuse. *See* HQ 966198, dated July 21, 2003 (ruling that a plastic stencil depicting a farm and farm animals is not a toy but a stencil designed to create tracings of a farm and farm animals); HQ 959189, dated September 25, 1996 (plastic stencils were designed primarily to make decorations, not to provide amusement); HQ 958063, dated February 13, 1996 (classifying a battery-operated drawing pad with pen for children as a drawing instrument of heading 9017 and not a toy because it was designed to facilitate drawing, not to amuse); HQ 953922, dated November 17, 1993 (classifying the “Video Painter” and “Design Studio Accessory Kit,” which included several stencils under heading 9017 for the same reason); HQ 962327, dated June 23, 2000, (articles in an art activity set were not put up in a form indicating their use as toys and thus the set was not classifiable as a toy set at GRI 1, and the individual items were not classifiable as toys, including a stencil); HQ 958152, dated April 2, 1996 (classifying light-up desk with designs for tracing as a drawing instrument) and HQ 958805, dated February 8, 1996 (classifying “Trace N’ Color” in heading 9017).

The commenter asserts that the above statement that “CBP has never considered writing, coloring, drawing or painting to have significant ‘manipulative play value,’ for purposes of classification as a toy,” is opposed to, and refuted by language in HQ 086407, dated March 22, 1990. HQ 086407 was affirmed by HQ 087441, dated January 8, 1991. In HQ 086407 and HQ 087441, the articles being classified were an “Arts, Crafts & Activities” kit, and a string art kit, which were classified under subheading 9503.70.80, HTSUS. The kits in issue in HQ 086407 and HQ 087441, were not limited to writing, coloring, drawing, or painting related items, but included, among other items, double sided game boards, playing pieces and dice, string art materials, as well as paints, brushes and an instruction manual, in one kit and string art with no writing, coloring, drawing or painting related items in the other kit. As the kits included a variety of articles not related to writing, coloring, drawing, or painting, the decision does not stand for the proposition that writing, coloring, drawing or painting, by themselves, have significant play value for purposes of classification as a toy. Although we do not find HQ 086407 and HQ 087441 dispositive with regard to the classification of plastic rubbing templates, or other items packaged with plastic rubbing templates, we do intend to evaluate them in the near future to determine whether the items at issue were correctly classified under heading 9503 as “other toys.”

The commenter asserts that the EN exclusions do not apply to the rubbing templates, as they are not specifically identified in the exclusions. The EN cannot limit the scope of a heading but does provide guidance. It is CBP’s position that from the EN, it may be inferred that other implements designed to facilitate drawing, and not amusement.



The activity performed with the rubbing template is similar to that performed with a stencil or by tracing. It involves following a design pattern to create a design which can be then colored.

The amusement derived from art-related activities is secondary to utility because those articles and sets used for drawing, coloring and other art-related activities are not “essentially playthings.” The articles are not designed to amuse, but “rather are designed to facilitate some kind of art or drawing activity.” See HQ 962327, *supra*. In certain cases, combinations of articles not ordinarily classifiable as toys, but intended primarily for use in role play, have been determined to be classifiable as toys in heading 9503, HTSUS. See *e.g.*, HQ 958344, dated October 2, 1997. Where the set is entirely composed of articles which are excluded from classification in heading 9503, HTSUS, as articles used for art-related activities, and the art-related activity is the primary purpose of the set, as in the instant case, we do not find the item to be primarily for role play.

For purposes of determining whether the rubbing template falls within the class or kind of merchandise as toys, we apply the Carborundum factors as follows:

The general physical characteristics of the “Cyborg Body Works” and “Fashion Designer Portfolio Drawing Set” is a plastic rubbing template with a raised design to be placed under paper in a frame and used for creating designs with crayons or pencils.

The expectation of the ultimate purchaser is to create the designs on the rubbing templates by using crayons and pencils.

We do not have information regarding the channels of trade.

We do not have any information regarding the environment of sale (accompanying accessories, manner of advertisement and display).

The use is not the same as toys because the use is creating designs by use of the rubbing template.

The economic practicality of using the articles for the creation of designs is clear, and it is unlikely any other use is recognized by the trade.

The foregoing application of the Carborundum criteria indicates that the “Cyborg Body Works” and “Fashion Designer Portfolio Drawing Set” are not goods of a kind designed for amusement, and therefore the principal use of the articles is not amusement, and they are not classified in heading 9503, HTSUS.

The subheading EN for subheading 9503.70 provides:

Subject to substantiated classification in heading 95.03 and for the purpose of this subheading:

(i) “Sets” are two or more different types of articles (principally for amusement), put up in the same packing for retail sale without repacking. Simple accessories or objects of minor importance intended to facilitate the use of the articles may also be included.

(ii) “Outfits” are two or more different articles put up in the same packing for retail sale without repacking, specific to a particular type of recreation, work, person or profession.

The subheading EN is subject to substantiated classification in heading 95.03. In this case, because the articles within the set consist of articles for art-related activities, articles excluded from heading 9503, HTSUS, classification in the heading has not been substantiated.

The commenter asserts that subheading 9503.70 is an *eo nomine* provision, and that goods may be classified therein pursuant to GRI 1, and that recourse to GRI 3 is unnecessary. While we agree that goods may be classified in subheading 9503.70, HTSUS by application of GRI 1, without recourse to GRI 3, we do not agree that subheading 9503.70 is an *eo nomine* provision. However, as explained above, and to clarify our conclusion, we do not find that the article at issue is designed for amusement, and therefore classification in the heading is not substantiated. *See* HQ 962327, dated June 23, 2000, in which it was determined that none of the items in an Adventure in Art Travel Pack were toys in their own right, and that nothing in the way the goods were put together made them a toy as opposed to the art and drawing materials which they are on their own, and as such they did not constitute a toy put up in a set. The next issue to be determined was whether they constituted a GRI 3(b) set outside of heading 9503, HTSUS. Because we have concluded that the subject article is not under heading 9503, HTSUS, as a set or otherwise, we also turn to GRI 3(b) to determine whether the article can be classified as a set under any other provision of the HTSUS.

The commenter cites to HQ 087441, dated January 8, 1991, which affirmed HQ 086407, *supra*, as supporting classification of art sets or kits under subheading 9503.70, HTSUS. Under HQ 087441, a prerequisite of classification in subheading 9503.70, HTSUS, is that the articles must be put up for use as a toy. Neither of the articles at issue in HQ 087441, were limited to drawing type of activities, such as in the instant article. Nothing about the instant article suggests any amusement other than that inherent in drawing and coloring. *See e.g.* HQ 962327, *supra*.

The commenter cites to HQ 086330, dated May 14, 1990, HQ 958361, dated July 3, 1996, and HQ 960067, dated March 24, 1998, all of which pertain to sets consisting of pens and plastic rings, intended to create spiral designs on paper. These were determined to be classified in subheading 9503.70, HTSUS. CBP finds the spiral drawing kits distinguishable from the rubbing template kits in issue, in that the spiral drawing kits are educational as to how mechanical things work, and require specific manipulation to the extent that gears combined with motion are involved.

The commenter compares the rubbing templates to “Super Egg Putty,” jacks, and jump ropes, which have been classified as toys within heading 9503, HTSUS, as opposed to articles of plastic, metal or other component materials. The commenter states that the items, like the rubbing templates, provide amusement in their use, warranting classification as toys. Unlike the other articles however, the rubbing templates, have the utilitarian purpose of creating designs, while the “Super Egg Putty” and jump ropes appear to be designed for amusement, and not some utilitarian purpose. Contrary to the comment, jacks have been classified in heading 9504, HTSUS as “Articles for arcade, table or parlor games. . . .” *See e.g.* NY C89031, dated June 26, 1998.

In HQ 952413, dated February 17, 1993, we had concluded that similar rubbing templates, were similar in character to the stencils in a “Stencils and Pencils” set that had been classified as a toy as opposed to a drawing

instrument, in HQ 950926, dated March 31, 1992. HQ 966197, dated July 21, 2003, revoked HQ 950926, concluding that the subject set was not designed for amusement, but had the essential character of the stencil, a drawing instrument, classified in heading 9017, HTSUS.

With respect to the rubbing templates, we do not find they are classified in heading 9017, HTSUS. The ENs to heading 9017, include among drawing instruments 1) pantographs and eidographs, 2) drafting machines, 3) drawing compasses, dividers, reduction compasses, spring bows, mathematical drawing pens, dotting wheels, etc., 4) set squares, adjustable squares, T squares, drawing curves, rulers, 5) protractors, and 6) stencils. In HQ 952413, *supra*, we stated that templates and stencils have similar definitions, however in that case found that the subject rubbing templates did not “precisely” fit the definition of a template. In HQ 952413, a “template” was defined as “a pattern, mold, or the like, usually consisting of a thin plate of wood or metal, serving as a gauge or guide in mechanical work.” We find that the rubbing templates at issue do not fit the definition of the type of template that is similar to a stencil, and are not described in heading 9017, HTSUS.

We find that the rubbing templates within the “Cyborg Body Works” and “Fashion Designer Portfolio Drawing Set” are classified in heading 3926, HTSUS, specifically in subheading 3926.90.98, HTSUS, as “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.”

No single heading covers the “Cyborg Body Works” and “Fashion Designer Portfolio Drawing Set” which consist of several different articles, therefore classification must be accomplished by other than GRI 1. Goods that are, *prima facie*, classifiable under two or more headings, are classifiable in accordance with GRI 3. GRI 3(a) states in part that when two or more headings each refer to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific, even if one heading gives a more precise description of the goods.

GRI 3(b) states, in relevant part, that goods put up in sets for retail sale shall be classified as if consisting of the material or component which gives them their essential character, insofar as this criterion is applicable. Explanatory Note (X) to GRI 3(b), on p. 5 (2002) states that for purposes of Rule 3(b) the term “goods put up in sets for retail sale” means goods which: (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and, (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

Each of the subject articles consist of 12 double-sided plastic rubbing templates, 12 colored pencils, 2 crayons, paper, and a plastic holder. The items are *prima facie* classifiable in more than two different headings. The items packaged together, consist of articles put up together to carry out the specific activity of creating images on paper. The articles are put up in a manner suitable for sale directly to users without repacking. Therefore the kits in question are within the term “goods put up in sets for retail sale.” GRI 3(b) states in part that goods put up in sets for retail sale, which cannot be classified by reference to 3(a), are to be classified as if they consisted of the component which gives them their essential character.

The factor or factors which determine essential character will vary with the goods. EN Rule 3(b)(VIII) lists as factors the nature of the material or component, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods. In this case, we find that the rubbing templates, for purposes of GRI 3(b), impart the essential character of the sets because they provide the designs to be to be drawn, the motif, and comprise the bulk of the set. *See* EN VIII, GRI 3(b); *see also* Better Home Plastics Corp. v. U.S., 916 F. Supp. 1265 (CIT 1996), *aff'd* 119 F.3d 969 (Fed. Cir. 1997).

Because the rubbing templates impart the essential character of the “Cyborg Body Works” and “Fashion Designer Portfolio Drawing Set” sets, they control the classification of the set. The rubbing templates are articles made of plastics. Articles of plastics are classified in Chapter 39, HTSUS. As no specific heading in Chapter 39 describes these articles, the rubbing templates are classified in heading 3926, HTSUS, specifically in subheading 3926.90.98, HTSUS, as “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The plastic rubbing templates are consistent with the plastic articles listed in the EN 39.26(12), such as “beads . . . , figures and letters.”

**HOLDING:**

By application of GRI 3(b), the “Cyborg Body Works” and “Fashion Designer Portfolio Drawing Set” are each classified in heading 3926, specifically subheading 3926.90.9880, HTSUSA, as “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other,” with a column one, general duty rate of 5.3% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY 885655, dated June 4, 1993 is hereby revoked.

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

## [ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967796  
FEBRUARY 28, 2006  
CLA-2-RR:CTF:TCM 967796 IOR  
CATEGORY: Classification  
Tariff No. 3926.90.9880

KATE MILLER  
LADDERS TO LEARNING, INC.  
*Box 1498*  
*Almonte, Ontario*  
*CANADA K0A 1A0*

Re: Rubbing Templates; NY G88117; modified

DEAR MS. MILLER:

On March 27, 2001, this office issued to you New York (NY) G88117, classifying various products which were components of a children's "reading activity kit" identified as "One Gray Mouse," under the Harmonized Tariff Schedule of the United States (HTSUS). One of the products, a plastic rubbing template, was classified as a toy under subheading 9503.90.00, HTSUS. We have reconsidered NY G88117 and have determined the classification of the rubbing template to be incorrect.

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 G88117 was published on November 16, 2005, in the *Customs Bulletin*, Volume 39, Number 47. One comment was received in response to that notice, opposing the proposed revocation. Relevant portions of the comment are discussed in the Law and Analysis section of this ruling.

**FACTS:**

In NY G88117, the rubbing template was described as a "Terrific Tracks Rubbing Plate," a plastic template to be used with pencils, crayons or the like to make rubbings depicting animal tracks.

**ISSUE:**

What is the classification of the "Terrific Tracks Rubbing Plate" under the HTSUS.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other .....
9017	Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof:
9017.20	Other drawing, marking-out or mathematical calculating instruments:
9017.20.80	Other .....
9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90.00	Other .....

The issue before us is whether the subject rubbing template is a toy. Articles of Chapter 95, HTSUS, are not classifiable in Chapter 39, or 90, HTSUS. *See* Note 2(v), Chapter 39 and Note 1(k), Chapter 90. The term "toy" is not defined in the HTSUS. In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The General EN for Chapter 95 states that the "Chapter covers toys of all kinds whether designed for the amusement of children or adults." The U.S. Court of International Trade (CIT) construes heading 9503, HTSUS, as a "principal use" provision, insofar as it pertains to "toys." *See Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (CIT 2000). Thus, to be a toy, the "character of amusement involved [is] that derived from an item which is essentially a plaything." *Wilson's Customs Clearance, Inc. v. United States*, 59 Cust. Ct. 36, C.D. 3061 (1967). It has been CBP's position that the amusement requirement means that toys should be designed and used principally for amusement.

For articles governed by principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use "is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use." In other words, the article's principal use at the time of importation determines whether it is classifiable within a particular class or kind.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the CIT has provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See United States v. Carborundum Company, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter Carborundum).

For articles that are both amusing and functional, we look to Ideal Toy Corp. v United States, 78 Cust. Ct. 28 (1977), in which the court stated that “when amusement and utility become locked in controversy, the question becomes one of determining whether amusement is incidental to the utilitarian purpose, or whether the utility purpose is incidental to the amusement.” Drawing and coloring are activities capable of providing amusement, but the ENs exclude from heading 9503, HTSUS, many articles that are used in drawing, coloring and other art activities. EN 95.03 states, in part, that heading 9503 excludes:

- (a) Paints put up for children’s use (heading 32.13).
- (b) Modelling pastes put up for children’s amusement (heading 34.07).
- (c) Children’s picture, drawing or colouring books of heading 49.03.
- (d) Transfers (heading 49.08).
- ...
- (h) Crayons and pastels for children’s use, of heading 96.09.
- (i) Slates and blackboards, of heading 96.10.

These exclusions provide that articles and sets comprised of articles used for drawing or coloring are not classifiable as toys or as toy sets (classified according to GRI 1 under subheading 9503.70.00). The fact that the drafters of the Harmonized System upon which the US tariff schedule is based provided for the above-listed articles *eo nomine* in headings other than heading 9503, HTSUS, evinces an intent by the drafters that they not be considered toys. To that end, CBP has long construed the scope of heading 9503, HTSUS, to exclude such articles and sets. In HQ 085267, dated May 9, 1990, CBP found that, with respect to the above items listed in the ENs, “[a]lthough they may tend to amuse those who use them, such amusement is incidental to their primary purpose.” That is, not all merchandise that provides amusement is properly classified in a toy provision. The listed items were further described as having primarily a drawing and craft function.

CBP has never considered writing, coloring, drawing or painting to have significant “manipulative play value,” for purposes of classification as a toy. Nor does CBP classify the tools for writing, coloring, drawing or painting as toys since those tools are not designed to amuse. See HQ 966198, dated July 21, 2003 (ruling that a plastic stencil depicting a farm and farm animals is not a toy but a stencil designed to create tracings of a farm and farm animals); HQ 959189, dated September 25, 1996 (plastic stencils were designed primarily to make decorations, not to provide amusement); HQ 958063, dated February 13, 1996 (classifying a battery-operated drawing pad with pen for children as a drawing instrument of heading 9017 and not a toy be-

cause it was designed to facilitate drawing, not to amuse); HQ 953922, dated November 17, 1993 (classifying the "Video Painter" and "Design Studio Accessory Kit," which included several stencils under heading 9017 for the same reason); HQ 962327, dated June 23, 2000, (articles in an art activity set were not put up in a form indicating their use as toys and thus the set was not classifiable as a toy set at GRI 1, and the individual items were not classifiable as toys, including a stencil); HQ 958152, dated April 2, 1996 (classifying light-up desk with designs for tracing as a drawing instrument) and HQ 958805, dated February 8, 1996 (classifying "Trace N' Color" in heading 9017).

The commenter asserts that the above statement that "CBP has never considered writing, coloring, drawing or painting to have significant 'manipulative play value,' for purposes of classification as a toy," is opposed to, and refuted by language in HQ 086407, dated March 22, 1990. HQ 086407 was affirmed by HQ 087441, dated January 8, 1991. In HQ 086407 and HQ 087441, the articles being classified were an "Arts, Crafts & Activities" kit, and a string art kit, which were classified under subheading 9503.70.80, HTSUS. The kits in issue in HQ 086407 and HQ 087441, were not limited to writing, coloring, drawing, or painting related items, but included, among other items, double sided game boards, playing pieces and dice, string art materials, as well as paints, brushes and an instruction manual, in one kit and string art with no writing, coloring, drawing or painting related items in the other kit. As the kits included a variety of articles not related to writing, coloring, drawing, or painting, the decision does not stand for the proposition that writing, coloring, drawing or painting, by themselves, have significant play value for purposes of classification as a toy. Although we do not find HQ 086407 and HQ 087441 dispositive with regard to the classification of plastic rubbing templates, or other items packaged with plastic rubbing templates, we do intend to evaluate them in the near future to determine whether the items at issue were correctly classified under heading 9503 as "other toys."

The commenter asserts that the EN exclusions do not apply to the rubbing templates, as they are not specifically identified in the exclusions. The EN cannot limit the scope of a heading but does provide guidance. It is CBP's position that from the EN, it may be inferred that other implements designed to facilitate drawing, and not amusement, are also excluded. *See*, HQ 958063, dated February 13, 1996.

The activity performed with the rubbing template is similar to that performed with a stencil or by tracing. It involves following a design pattern to create a design which can be then colored.

The amusement derived from art-related activities is secondary to utility because those articles and sets used for drawing, coloring and other art-related activities are not "essentially playthings." The articles are not designed to amuse, but "rather are designed to facilitate some kind of art or drawing activity." *See* HQ 962327, *supra*.

For purposes of determining whether the rubbing template falls within the class or kind of merchandise as toys, we apply the Carborundum factors as follows:

The general physical characteristics of a rubbing template is plastic with a raised design to be used for creating designs with crayons or pencils.



The expectation of the ultimate purchaser is to create the designs on the rubbing templates by using crayons and pencils.

We do not have information regarding the channels of trade.

We do not have any information regarding the environment of sale (accompanying accessories, manner of advertisement and display).

The use is not the same as toys because the use is creating designs by use of the rubbing template.

The economic practicality of using the template for the creation of designs is clear, and it is unlikely any other use is recognized by the trade.

The foregoing application of the Carborundum criteria indicates that the rubbing template is not a good of a kind designed for amusement, and therefore the principal use of the rubbing template is not amusement, and the rubbing template is not classified in heading 9503, HTSUS.

The commenter compares the rubbing templates to "Super Egg Putty," jacks, and jump ropes, which have been classified as toys within heading 9503, HTSUS, as opposed to articles of plastic, metal or other component materials. The commenter states that the items, like the rubbing templates, provide amusement in their use, warranting classification as toys. Unlike the other articles however, the rubbing templates, have the utilitarian purpose of creating designs, while the "Super Egg Putty" and jump ropes appear to be designed for amusement, and not some utilitarian purpose. Contrary to the comment, jacks have been classified in heading 9504, HTSUS as "Articles for arcade, table or parlor games. . . ." See *e.g.* NY C89031, dated June 26, 1998.

In HQ 952413, dated February 17, 1993, we had concluded that similar rubbing templates therein, were similar in character to a "Stencils and Pencils" set that had been classified as a toy as opposed to a drawing instrument, in HQ 950926, dated March 31, 1992. HQ 966197, dated July 21, 2003, revoked HQ 950926, concluding that the subject set was not designed for amusement, but had the essential character of the stencil, a drawing instrument, classified in heading 9017, HTSUS.

With respect to the rubbing template, we do not find it is classified in heading 9017, HTSUS. The ENs to heading 9017, include among drawing instruments 1) pantographs and eidographs, 2) drafting machines, 3) drawing compasses, dividers, reduction compasses, spring bows, mathematical drawing pens, dotting wheels, etc., 4) set squares, adjustable squares, T squares, drawing curves, rulers, 5) protractors, and 6) stencils. In HQ 952413, *supra*, we stated that templates and stencils have similar definitions, however in that case found that the subject rubbing templates did not "precisely" fit the definition of a template. In HQ 952413, a "template" was defined as "a pattern, mold, or the like, usually consisting of a thin plate of wood or metal, serving as a gauge or guide in mechanical work." We find that the rubbing template at issue does not fit the definition of the type of template that is similar to a stencil, and is not described in heading 9017, HTSUS.

The "Terrific Tracks Rubbing Plate," rubbing template is an article made of plastics. Articles of plastics are classified in Chapter 39, HTSUS. As no specific heading in Chapter 39 describes this article, the "Terrific Tracks Rubbing Plate" rubbing template is classified in heading 3926, HTSUS, specifically in subheading 3926.90.98, HTSUS, as "[o]ther articles of plastics

and articles of other materials of headings 3901 to 3914: Other: Other.” The plastic rubbing template is consistent with the plastic articles listed in the EN 39.26(12), such as “beads . . . , figures and letters.”

**HOLDING:**

By application of GRI 1 the “Terrific Tracks Rubbing Plate,” rubbing template is classified in heading 3926, specifically in subheading 3926.90.9880, HTSUSA, as “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other,” with a column one, general duty rate of 5.3% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY G88117, dated March 27, 2001, is hereby modified.

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

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY,  
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 967799  
FEBRUARY 28, 2006  
CLA-2-RR:CTF:TCM 967799 IOR  
CATEGORY: Classification  
Tariff No. 3926.90.9880

FRED SHAPIRO  
FASCO (USA) LTD.  
39 E. Hanover Avenue  
Morris Plains, NJ 07950

Re: Rubbing Templates; NY 811162; modified

DEAR MR. SHAPIRO:

On June 20, 1995, the Director, National Commodity Specialist Division issued to you New York Ruling Letter (NY) 811162, classifying various products under the Harmonized Tariff Schedule of the United States (HTSUS). One of the products, a “Polly Pocket Crayon By Number Activity Caddy,” was classified as a toy under subheading 9503.90.00, HTSUS. We have reconsidered NY 811162 and have determined the classification of the “Polly Pocket Crayon By Number Activity Caddy,” to be incorrect.

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 811162 was published on November 16, 2005, in the *Customs Bulletin*, Volume 39, Number 47. One comment was received in response to that notice, opposing the

proposed revocation. Relevant portions of the comment are discussed in the Law and Analysis section of this ruling.

**FACTS:**

In NY 811162, the “Polly Pocket Crayon By Number Activity Caddy,” was described as follows:

The article consists of 6 double sided plastic plates, 8 crayons, one plastic caddy, a blank paper roll and 2 printed paper rolls. The plastic plates, or “rubbing plates” as they are called, measure 4 3/4 inches by 4 inches and have various raised scenic designs. The plastic caddy measures 11 1/2 by 7 1/2 inches. It serves as a work area and storage container for the plates, crayons and paper rolls. The caddy is specially constructed to hold the blank paper rolls and plates in place. To operate, the child inserts a “rubbing plate” in the frame portion of the caddy, unwinds a blank piece of paper over the “rubbing plate” and closes the plastic frame. The frame holds all items in place and by rubbing a crayon over the paper an outline of the desired picture is obtained. With the outline established the plate may be removed and the child may color the picture.

**ISSUE:**

What is the classification of the “Polly Pocket Crayon By Number Activity Caddy” under the HTSUS.

**LAW AND ANALYSIS:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.98	Other .....
9017	Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere in this chapter; parts and accessories thereof:
9017.20	Other drawing, marking-out or mathematical calculating instruments:
9017.20.80	Other .....

9503 Other toys; reduced-size (“scale”) models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:

9503.90.00 Other . . . . .

The issue before us is whether the “Polly Pocket Crayon By Number Activity Caddy” is classifiable within heading 9503, HTSUS as other toys, or whether it is classifiable as sets elsewhere. Articles of Chapter 95, HTSUS, are not classifiable in Chapter 39, or 90, HTSUS. See Note 2(v), Chapter 39 and Note 1(k), Chapter 90.

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

The General EN for Chapter 95 states that the “Chapter covers toys of all kinds whether designed for the amusement of children or adults.” The U.S. Court of International Trade (CIT) construes heading 9503, HTSUS, as a “principal use” provision, insofar as it pertains to “toys.” See *Minnetonka Brands v. United States*, 110 F. Supp. 2d 1020, 1026 (CIT 2000). Thus, to be a toy, the “character of amusement involved [is] that derived from an item which is essentially a plaything.” *Wilson’s Customs Clearance, Inc. v. United States*, 59 Cust. Ct. 36, C.D. 3061 (1967). It has been CBP’s position that the amusement requirement means that toys should be designed and used principally for amusement.

For articles governed by principal use, Additional U.S. Rule of Interpretation 1(a), HTSUS, provides that, in the absence of special language or context which otherwise requires, such use “is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.” In other words, the article’s principal use at the time of importation determines whether it is classifiable within a particular class or kind.

While Additional U.S. Rule of Interpretation 1(a), HTSUS, provides general criteria for discerning the principal use of an article, it does not provide specific criteria for individual tariff provisions. However, the CIT has provided factors which are indicative but not conclusive, to apply when determining whether merchandise falls within a particular class or kind. They include: general physical characteristics, the expectation of the ultimate purchaser, channels of trade, environment of sale (accompanying accessories, manner of advertisement and display), use in the same manner as merchandise which defines the class, economic practicality of so using the import, and recognition in the trade of this use. See *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F. 2d 373 (1976), cert. denied, 429 U.S. 979 (hereinafter *Carborundum*).

For articles that are both amusing and functional, we look to *Ideal Toy Corp. v. United States*, 78 Cust. Ct. 28 (1977), in which the court stated that “when amusement and utility become locked in controversy, the question becomes one of determining whether amusement is incidental to the utilitarian purpose, or whether the utility purpose is incidental to the amusement.”

Drawing and coloring are activities capable of providing amusement, but the ENs exclude from heading 9503, HTSUS, many articles that are used in drawing, coloring and other art activities. EN 95.03 states, in part, that heading 9503 excludes:

- (a) Paints put up for children's use (heading 32.13).
- (b) Modelling pastes put up for children's amusement (heading 34.07).
- (c) Children's picture, drawing or colouring books of heading 49.03.
- (d) Transfers (heading 49.08).
- ...
- (h) Crayons and pastels for children's use, of heading 96.09.
- (ij) Slates and blackboards, of heading 96.10.

These exclusions provide that articles and sets comprised of articles used for drawing or coloring are not classifiable as toys or as toy sets (classified according to GRI 1 under subheading 9503.70.00). The fact that the drafters of the Harmonized System upon which the U.S. tariff schedule is based provided for the above-listed articles *eo nomine* in headings other than heading 9503, HTSUS, evinces an intent by the drafters that they not be considered toys. To that end, CBP has long construed the scope of heading 9503, HTSUS, to exclude such articles and sets. In HQ 085267, dated May 9, 1990, CBP found that, with respect to the above items listed in the ENs, "[a]lthough they may tend to amuse those who use them, such amusement is incidental to their primary purpose." That is, not all merchandise that provides amusement is properly classified in a toy provision. The listed items were further described as having primarily a drawing and craft function.

CBP has never considered writing, coloring, drawing or painting to have significant "manipulative play value," for purposes of classification as a toy. Nor does CBP classify the tools for writing, coloring, drawing or painting as toys since those tools are not designed to amuse. *See* HQ 966198, dated July 21, 2003 (ruling that a plastic stencil depicting a farm and farm animals is not a toy but a stencil designed to create tracings of a farm and farm animals); HQ 959189, dated September 25, 1996 (plastic stencils were designed primarily to make decorations, not to provide amusement); HQ 958063, dated February 13, 1996 (classifying a battery-operated drawing pad with pen for children as a drawing instrument of heading 9017 and not a toy because it was designed to facilitate drawing, not to amuse); HQ 953922, dated November 17, 1993 (classifying the "Video Painter" and "Design Studio Accessory Kit," which included several stencils under heading 9017 for the same reason); HQ 962327, dated June 23, 2000, (determining that articles in an art activity set were not put up in a form indicating their use as toys and thus the set was not classifiable as a toy set at GRI 1, and the individual items were not classifiable as toys, including a stencil); HQ 958152, dated April 2, 1996 (classifying light-up desk with designs for tracing as a drawing instrument) and HQ 958805, dated February 8, 1996 (classifying "Trace N' Color" in heading 9017).

The commenter asserts that the above statement that "CBP has never considered writing, coloring, drawing or painting to have significant 'manipulative play value,' for purposes of classification as a toy," is opposed to, and refuted by language in HQ 086407, dated March 22, 1990. HQ 086407 was affirmed by HQ 087441, dated January 8, 1991. In HQ 086407 and HQ 087441, the articles being classified were an "Arts, Crafts & Activities" kit, and a string art kit, which were classified under subheading 9503.70.80,

HTSUS. The kits in issue in HQ 086407 and HQ 087441, were not limited to writing, coloring, drawing, or painting related items, but included, among other items, double sided game boards, playing pieces and dice, string art materials, as well as paints, brushes and an instruction manual, in one kit and string art with no writing, coloring, drawing or painting related items in the other kit. As the kits included a variety of articles not related to writing, coloring, drawing, or painting, the decision does not stand for the proposition that writing, coloring, drawing or painting, by themselves, have significant play value for purposes of classification as a toy. Although we do not find HQ 086407 and HQ 087441 dispositive with regard to the classification of plastic rubbing templates, or other items packaged with plastic rubbing templates, we do intend to evaluate them in the near future to determine whether the items at issue were correctly classified under heading 9503 as "other toys."

The commenter asserts that the EN exclusions do not apply to the rubbing templates, as they are not specifically identified in the exclusions. The EN cannot limit the scope of a heading but does provide guidance. It is CBP's position that from the EN, it may be inferred that other implements designed to facilitate drawing, and not amusement, are also excluded. *See*, HQ 958063, dated February 13, 1996.

The activity performed with the rubbing template is similar to that performed with a stencil or by tracing. It involves following a design pattern to create a design which can be then colored.

The amusement derived from art-related activities is secondary to utility because those articles and sets used for drawing, coloring and other art-related activities are not "essentially playthings." The articles are not designed to amuse, but "rather are designed to facilitate some kind of art or drawing activity." *See* HQ 962327, *supra*.

For purposes of determining whether the "Polly Pocket Crayon By Number Activity Caddy" falls within the class or kind of merchandise as toys, we apply the Carborundum factors as follows:

The general physical characteristics of the "Polly Pocket Crayon By Number Activity Caddy" is a plastic rubbing template with a raised design to be placed under paper in a frame and used for creating designs with crayons.

The expectation of the ultimate purchaser is to create the designs on the rubbing templates by using crayons and pencils.

We do not have information regarding the channels of trade.

We do not have any information regarding the environment of sale (accompanying accessories, manner of advertisement and display).

The use is not the same as toys because the use is creating designs by use of the rubbing template.

The economic practicality of using the articles for the creation of designs is clear, and it is unlikely any other use is recognized by the trade.

The foregoing application of the Carborundum criteria indicates that the "Polly Pocket Crayon By Number Activity Caddy" is not a good of a kind designed for amusement, and therefore the principal use of the "Polly Pocket Crayon By Number Activity Caddy" is not amusement, and it is not classified in heading 9503, HTSUS.

The subheading EN for subheading 9503.70 provides:

Subject to substantiated classification in heading 95.03 and for the purpose of this subheading:

(i) "Sets" are two or more different types of articles (principally for amusement), put up in the same packing for retail sale without repackaging. Simple accessories or objects of minor importance intended to facilitate the use of the articles may also be included.

(ii) "Outfits" are two or more different articles put up in the same packing for retail sale without repackaging, specific to a particular type of recreation, work, person or profession.

The subheading EN is subject to substantiated classification in heading 95.03. In this case, because the articles within the set consist of articles for art-related activities, articles excluded from heading 9503, HTSUS, classification in the heading has not been substantiated.

The commenter asserts that subheading 9503.70 is an *eo nomine* provision, and that goods may be classified therein pursuant to GRI 1, and that recourse to GRI 3 is unnecessary. We agree with the commenter's assertion. However, as explained above, and to clarify our conclusion, we do not find that the article at issue is designed for amusement, and therefore classification in the heading is not substantiated. *See* HQ 962327, dated June 23, 2000, in which it was determined that none of the items in an Adventure in Art Travel Pack were toys in their own right, and that nothing in the way the goods were put together made them a toy as opposed to the art and drawing materials which they are on their own, and as such they did not constitute a toy put up in a set. The next issue to be determined was whether they constituted a GRI 3(b) set outside of heading 9503, HTSUS. Because we have concluded that the subject article is not under heading 9503, HTSUS, as a set or otherwise, we also turn to GRI 3(b) to determine whether the article can be classified as a set under any other provision of the HTSUS.

The commenter cites to HQ 087441, dated January 8, 1991, which affirmed HQ 086407, *supra*, as supporting classification of art sets or kits under subheading 9503.70, HTSUS. Under HQ 087441, a prerequisite of classification in subheading 9503.70, HTSUS, is that the articles must be put up for use as a toy. Neither of the articles at issue in HQ 087441, were limited to drawing type of activities, such as in the instant article. Nothing about the instant article suggests any amusement other than that inherent in drawing and coloring. *See e.g.* HQ 962327, *supra*.

The commenter cites to HQ 086330, dated May 14, 1990, HQ 958361, dated July 3, 1996, and HQ 960067, dated March 24, 1998, all of which pertain to sets consisting of pens and plastic rings, intended to create spiral designs on paper. These were determined to be classified in subheading 9503.70, HTSUS. CBP finds the spiral drawing kits distinguishable from the rubbing template kits in issue, in that the spiral drawing kits are educational as to how mechanical things work, and require specific manipulation to the extent that gears combined with motion are involved.

The commenter compares the rubbing templates to "Super Egg Putty," jacks, and jump ropes, which have been classified as toys within heading 9503, HTSUS, as opposed to articles of plastic, metal or other component materials. The commenter states that the items, like the rubbing templates, provide amusement in their use, warranting classification as toys. Unlike

the other articles however, the rubbing templates, have the utilitarian purpose of creating designs, while the “Super Egg Putty” and jump ropes appear to be designed for amusement, and not some utilitarian purpose. Contrary to the comment, jacks have been classified in heading 9504, HTSUS as “Articles for arcade, table or parlor games. . . .” See *e.g.* NY C89031, dated June 26, 1998.

In HQ 952413, dated February 17, 1993, we had concluded that similar rubbing templates therein, were similar in character to a “Stencils and Pencils” set that had been classified as a toy as opposed to a drawing instrument, in HQ 950926, dated March 31, 1992. HQ 966197, dated July 21, 2003, revoked HQ 950926, concluding that the subject set was not designed for amusement, but had the essential character of the stencil, a drawing instrument, classified in heading 9017, HTSUS.

With respect to the rubbing templates, we do not find they are classified in heading 9017, HTSUS. The ENs to heading 9017, include among drawing instruments 1) pantographs and eidographs, 2) drafting machines, 3) drawing compasses, dividers, reduction compasses, spring bows, mathematical drawing pens, dotting wheels, etc., 4) set squares, adjustable squares, T squares, drawing curves, rulers, 5) protractors, and 6) stencils. In HQ 952413, *supra*, we stated that templates and stencils have similar definitions, however in that case found that the subject rubbing templates did not “precisely” fit the definition of a template. In HQ 952413, a “template” was defined as “a pattern, mold, or the like, usually consisting of a thin plate of wood or metal, serving as a gauge or guide in mechanical work.” We find that the rubbing templates at issue do not fit the definition of the type of template that is similar to a stencil, and are not described in heading 9017, HTSUS.

We find that the rubbing templates are classified in heading 3926, HTSUS, specifically in subheading 3926.90.98, HTSUS, as “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.”

No single heading covers the subject “Polly Pocket Crayon By Number Activity Caddy” which consists of several different articles, therefore classification must be accomplished by other than GRI 1. Goods that are, *prima facie*, classifiable under two or more headings, are classifiable in accordance with GRI 3. GRI 3(a) states in part that when two or more headings each refer to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific, even if one heading gives a more precise description of the goods.

GRI 3(b) states, in relevant part, that goods put up in sets for retail sale shall be classified as if consisting of the material or component which gives them their essential character, insofar as this criterion is applicable. Explanatory Note (X) to GRI 3(b), on p. 5 (2002) states that for purposes of Rule 3(b) the term “goods put up in sets for retail sale” means goods which: (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings; (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and, (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The subject merchandise consists of 6 plastic double sided rubbing templates, 8 crayons, a plastic frame/caddy, a blank paper roll and 2 printed paper rolls. The items are *prima facie* classifiable in more than two different



headings. The items packaged together, consist of articles put up together to carry out the specific activity of creating images on paper. The articles are put up in a manner suitable for sale directly to users without repacking. Therefore the kit in question is within the term “goods put up in sets for retail sale.” GRI 3(b) states in part that goods put up in sets for retail sale, which cannot be classified by reference to 3(a), are to be classified as if they consisted of the component which gives them their essential character.

The factor or factors which determine essential character will vary with the goods. EN Rule 3(b)(VIII) lists as factors the nature of the material or component, their bulk, quantity, weight or value, and the role of a constituent material in relation to the use of the goods. In this case, we find that the rubbing templates, for purposes of GRI 3(b), impart the essential character of the set as they provide the designs to be to be drawn, and the motif of the set. See EN VIII, GRI 3(b); see also Better Home Plastics Corp. v. U.S., 916 F. Supp. 1265 (CIT 1996), aff’d 119 F. 3d 969 (Fed. Cir. 1997).

Because the rubbing templates impart the essential character of the “Polly Pocket Crayon By Number Activity Caddy” set, they control the classification of the set. The rubbing templates are articles made of plastics. Articles of plastics are classified in Chapter 39, HTSUS. As no specific heading in Chapter 39 describes these articles, the rubbing templates are classified in heading 3926, HTSUS, specifically in subheading 3926.90.98, HTSUS, as “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other.” The plastic rubbing templates are consistent with the plastic articles listed in the EN 39.26(12), such as “beads . . . , figures and letters.”

**HOLDING:**

By application of GRI 3(b) the “Polly Pocket Crayon By Number Activity Caddy” is classified in heading 3926, specifically subheading 3926.90.9880, HTSUSA, as “[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: Other: Other,” with a column one, general duty rate of 5.3% *ad valorem*. Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY 811162, dated June 20, 1995, is hereby modified.

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

