Bureau of Customs and Border Protection

CBP Decisions

(CBP Dec. 05–39)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATES FOR OCTOBER, 2005

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 05–36 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): October 10, 2005

There were no variances from the quarterly rates for October, 2005.

Dated: November 1, 2005

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

(CBP Dec. 05–40)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR OCTOBER, 2005

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

Holiday(s): October 10, 2005

European Union euro:

October 1, 2005	1.205800
October 2, 2005	1.205800
October 3, 2005	1.191400
October 4, 2005	1.191800
October 5, 2005	1.198400
October 6, 2005	1.213300
October 7, 2005	1.211500
October 8, 2005	1.211500
October 9, 2005	1.211500
October 10, 2005	1.211500
October 11, 2005	1.201500
October 12, 2005	1.204000
October 13, 2005	1.193800
October 14, 2005	1.207300
October 15, 2005	1.207300
October 16, 2005	1.207300
October 17, 2005	1.204000
October 18, 2005	1.193900
October 19, 2005	1.198800
October 20, 2005	1.198200
October 21, 2005	1.195800
October 22, 2005	1.195800
October 23, 2005	1.195800
October 24, 2005	1.199800
October 25, 2005	1.209900
October 26, 2005	1.208200
October 27, 2005	1.214800
October 28, 2005	1.208900
October 29, 2005	1.208900
October 30, 2005	1.208900
October 31, 2005	1.199500

South Korea won:

October 1, 2005	0.000959
October 2, 2005	0.000959
October 3, 2005	0.000958
October 4, 2005	0.000959
October 5, 2005	0.000962
October 6, 2005	0.000962
October 7, 2005	0.000964
October 8, 2005	0.000964
October 9, 2005	0.000964
October 10, 2005	0.000964
October 11, 2005	0.000961
October 12, 2005	0.000959
October 13, 2005	0.000953
October 14, 2005	0.000960
October 15, 2005	0.000960
October 16, 2005	0.000960
October 17, 2005	0.000954
October 18, 2005	0.000950
October 19, 2005	0.000950
October 20, 2005	0.000949
October 21, 2005	0.000944
October 22, 2005	0.000944

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

South Korea won: (continued):

October 23, 2005	0.000944
October 24, 2005	0.000947
October 25, 2005	0.000955
October 26, 2005	0.000957
October 27, 2005	0.000962
October 28, 2005	0.000959
October 29, 2005	0.000959
October 30, 2005	0.000959
October 31, 2005	0.000958

Taiwan N.T. dollar:

October 1, 2005	0.030139
October 2, 2005	0.030139
October 3, 2005	0.030130
October 4, 2005	0.030039
October 5, 2005	0.030130
October 6, 2005	0.030111
October 7, 2005	0.030130
October 8, 2005	0.030130
October 9, 2005	0.030130
October 10, 2005	0.030130
October 11, 2005	0.030102
October 12, 2005	0.030003
October 13, 2005	0.029913
October 14, 2005	0.029931
October 15, 2005	0.029931
October 16, 2005	0.029931
October 17, 2005	0.029895
October 18, 2005	0.029815
October 19, 2005	0.029727
October 20, 2005	0.029691
October 21, 2005	0.029735
October 22, 2005	0.029735
October 23, 2005	0.029735
October 24, 2005	0.029612
October 25, 2005	0.029638
October 26, 2005	0.029709
October 27, 2005	0.029735
October 28, 2005	0.029762
October 29, 2005	0.029762
October 30, 2005	0.029762
October 31, 2005	0.029806

Dated: November 1, 2005

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

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, November 9, 2005,

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.

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

General Notices

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF AUTO-SAMPLERS FOR A CHROMATOGRAPH AND A DNA SEQUENCING GENETIC ANALYZER MACHINE

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

ACTION: Notice of proposed revocation of tariff classification ruling letters and revocation of treatment relating to the classification of auto-sampler machines that are used with and attached to a chromatograph or a DNA sequencing genetic analyzer machine.

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) intends to revoke three ruling letters relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of auto-samplers that are used with and attached to a chromatograph or a DNA genetic analyzer machine. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before December 23, 2005.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs 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 Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Robert Dinerstein, Tariff Classification Branch and Marking Branch, at (202) 572–8721.

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 intends to revoke three ruling letters relating to the tariff classification of auto-samplers that attached to other machines that analyze samples such as a chromatograph and a DNA Sequencing Analyzer. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) 899900 dated July 20, 1994, NY G86629, dated January 29, 2001, and NY G84697, dated December 12, 2000, (Attachments A, B, and C, respectively), 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 three identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise 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 merchandise. Any person involved with 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 899900, NY G84697, and NY G86629, CBP classified devices known as auto-samplers which were attached to other machines that perform an analysis of samples in subheading 9027.90.54, HTSUS, which provides for parts and accessories of instruments and apparatus for physical or chemical analysis in subheading 9027.20, 9027.30, 9027.40, 9027.50 or 9027.80. The auto-samplers are used to automate the process by which various samples are prepared and moved into the other machine that analyzes the samples. In NY 899900 the auto-sampler was attached to chromatographs. NY G84697 and NY G86629 dealt with auto-sampler platforms that were attached to DNA sequencing genetic analyzing machines. Based on our examination of the scope of the terms of heading 9027, HTSUS, and Legal Note 2(a) to Chapter 90, of the HTSUS, we have determined that the auto-samplers are not classified as parts or accessories of instruments and apparatus for physical or chemical analysis. Instead, we have concluded that the auto-samplers subject to this notice are classified in heading 8479, specifically in subheading 8479.89.9897, HTSUS, as: "Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other: Other: Other".

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY 84697, NY G86629, NY 899900, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letters (HQ) 967842 and HQ 967843 (Attachments D and E). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that is contrary to the determination set forth in this notice.

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

DATED: November 2, 2005

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

(ATTACHMENT A)

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY 899900
CLA–2–90:S:N:N1::105 899900
Category: Classification
TARIFFNO.: 9027.90–552O(EN)

MS. LYNN M. RYE
MASS EVOLUTION, INC.
330 Meadowfern, Suite 113
Houston, TX 77067

RE: The tariff classification of a gas programmable sample injector for a chromatograph from France

DEAR MS. RYE:

In your letter dated July 8, 1994, you requested a tariff classification ruling.

Your literature describes the ALS 104GC autosampler as an automatic programmable sample injector which can be programmed for right or left injection in up to four vertical ports. The ALS 104 GC autosampler works in conjunction with a gas chromatograph performing repetitious motions of drawing samples from vial tray, injecting them into a gas chromatograph and then rinsing the injection syringe in the vial.

The applicable subheading for the ALS 104GC will be 9027.90–5520(EN), Harmonized Tariff Schedule of the United States (HTS), which provides for instruments and apparatus for physical or chemical analysis, chromatographs, parts and accessories, other. The rate of duty will be 4.9 percent ad valorem.

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

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

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

(ATTACHMENT B)

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY G86629
January 29, 2001
CLA–2–90:RR:NC:MM:114 G86629
CATEGORY: Classification
TARIFF NO.: 9027.90.5450

MR. MATTHEW K. NAKACHI
GEORGE R. TUTTLE, LAW OFFICES
Three Embarcadero Center, Suite 1160
San Francisco, California 94111

RE: The tariff classification of the Autosampler Platform used with the ABI Prism 3100 Genetic Analyzer

DEAR MR. NAKACHI:

When we issued NY G84697 dated December 12, 2000, we classified the autosampler platform for the AMI Prism 3100 Genetic Analyzer under 9027.90.5430, Harmonized Tariff Schedule of the United States. Subsequently you brought to our attention that the description of the ABI Prism 3100 Genetic Analyzer was incorrect. In response, we issued NY Ruling G86132 dated January 26, 2001 on the ABI Prism 3100 Genetic Analyzer classifying it under 9027.50.4015, Harmonized Tariff Schedule of the United States. This necessitates a change in the statistical suffix which applies to the autosampler platform. The statistical suffix that is applicable to the autosampler platform for the ABI Prism 3100 Genetic Analyzer is 9027.90.5450, Harmonized Tariff Schedule of the United States.

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 Barbara Kiefer at 212–637–7058.

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

(ATTACHMENT C)

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY G84697
December 12, 2000
CLA–2–90:RR:NC:MM:114 G84697
CATEGORY: Classification
TARIFF NO.: 9027.90.5430

MR. MATTHEW K. NAKACHI
GEORGE R. TUTTLE, LAW OFFICES
Three Embarcadero Center, Suite 1160
San Francisco, California 94111

RE: The tariff classification of the Autosampler Platform used with the ABI Prism 3100 Genetic Analyzer

DEAR MR. NAKACHI:

In your letter dated November 22, 2000, on behalf of Applied Biosystems, you requested a tariff classification ruling on the autosampler platform (A/S) used with the ABI Prism 3100 Genetic Analyzer (ABI).

The ABI is a fluorescence-based DNA analysis system using the technologies of capillary electrophoresis and laser fluorescence with CCD recording technology to analyze genetic material. After importation, the ABI DNA sequencer is combined with a computer workstation running proprietary analysis software that performs sequencing analysis. The ABI contains an electrophoresis instrument, a laser system and a CCD camera. The electrophoresis instrument sorts (by size sample) DNA that has been treated with a chemical dye. The laser causes the reporter dye to fluoresce so that analysis of the separated genetic information can be measured from the light intensity of the fluorescent dye. The CCD camera digitizes the fluoresced strands of DNA so that the digitized information can be analyzed using the computer and the proprietary software.

The autosampler platform, part no. 628–0310, is a motorized platform and tray with x-y-z movement functionality. Three stepper motors accomplish the x-y-z movement. The autosampler platform moves the DNA samples to the pins of the capillary array and moves a buffer reservoir and an electrode to the pin of the capillary array. The autosampler platform causes the DNA sample to be moved so as to insert the capillary array pins into these samples. Once in position, the DNA is automatically drawn up into the capillary array pins. Secondly, the buffer solution is moved so that the pins of the capillary array are submerged in the solution.

The applicable subheading for the autosampler platform will be 9027.90.5430, Harmonized Tariff Schedule of the United States (HTS), which provides for parts and accessories of instruments and apparatus of subheading 9027.20, 9027.30, 9027.40, 9027.50 or 9027.80; of articles of subheading 9027.30.40. The rate of duty will be free and will remain unchanged in 2001.

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 Barbara Kiefer at 212–637–7058.

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

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967842
CLA–02 RR:CTF:TCM 967842 RSD
CATEGORY: Classification
TARIFF NO: 8479.89.98

MR. BRECHBUHLER
BRECHBUHLER, INC.
3845 FM 1960 W
One Cornerstone Plaza, Suite 275
Houston, Texas 77068

RE: Revocation of NY 899900 (issued on July 20, 1994) regarding ALS 104 GC Auto-Sampler

DEAR MR. BRECHBUHLER:

The National Commodity Specialist Division of Customs and Border Protection (CBP) issued ruling NY 899900 on July 20, 1994, to Mass Evolution Inc., regarding the classification of the ALS 104 GC Auto-Sampler under the Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered this ruling, and now believe that the classification of the ALS 104 GC Auto-Sampler specified in NY 899900 is incorrect. This ruling sets forth the correct classification of the ALS 104 GC Auto-Sampler. An Internet search revealed that Brechbuler, Inc. was the successor company for products sold by Mass Evolution, Inc.

FACTS:

The subject merchandise under consideration in NY 899900 was called the ALS 104 GC Auto-Sampler (auto-sampler). It was described in the ruling as an automatic programmable sample injector that could be programmed for right or left injection in up to four vertical ports. The ruling further indicated that the auto-sampler worked in conjunction with a gas chromatograph by performing repetitious motions of drawing samples from a vial tray. It worked by injecting samples into a gas chromatograph and by raising the injection syringe in the vials. The auto-sampler mainly consisted of a motorized tray and a sampling tower, which contained motors and syringes that were used for drawing liquids analyzed by the gas chromatograph from the test vials. The device rotated the tray, and then raised and lowered a syringe into the test vials to draw the liquid. It also had a position for flush vials that were used to clean the syringe after an injection and a position for a waste vial where a solvent used for rinsing was disposed.

ISSUE:

Whether the auto-sampler is classified under heading 8479, HTSUS, as a machine or mechanical appliance having individual functions not specified or included elsewhere or under heading 9027, HTSUS, as Instruments and apparatus for physical or chemical analysis . . . ; parts and accessories thereof.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and mechanical appliances:
8479.89	Other:
	Other:
8479.89.98	Other.
	* * *
9027	Instruments and apparatus for physical or chemical analysis for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes; parts and accessories thereof:
9027.90	Microtomes; parts and accessories:
	Parts and Accessories:
	Of electrical instruments and apparatus:
	Other:
9027.90.54	Of instruments and apparatus of subheading 9027.20, 9027.30, 9027.40, 9027.50 or 9027.80.
	* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (EN's) constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the Harmonized System. CBP believes the EN's

should always be consulted. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

In NY 883067, dated March 10, 1993; NY 893932, dated February 15, 1994; and NY G82571, dated October 20, 2000, CBP considered the classification of auto-sampler type devices that were very similar to the auto-sampler that was the subject of NY 899900. In these rulings, CBP classified the auto-sampler devices in heading 8479, HTSUS. Like the auto-sampler under consideration in NY 899900, the auto-sampler devices used pumps, motors, and syringes to repeatedly withdraw specific volumes of material from test vials for analysis by another machine or system. In determining that the auto-samplers were classified in heading 8479, HTSUS, the rulings followed the commentary provided in EN 84.79 that heading 8479 HTSUS, covers machines that perform their individual function when they are attached to a separate more complex machine. Thus, the basic rationale for classifying the auto-samplers in heading 8479, HTSUS, was that they performed no analytical operations by themselves and that to perform their individual function they needed to be attached to another machine.

In another ruling, HQ 965754, dated October 4, 2002, CBP considered the classification in the HTSUS of a CVS exhaust gas dilution system that was used with an exhaust gas measuring system. The CVS system was designed to perform exhaust gas tests on gasoline and diesel engines to determine if they met exhaust pollution standards. The system did not measure the actual content of the exhaust gases. Rather, it prepared a diluted sample and measured its volume for another apparatus to volumetrically analyze the chemical content of the gases. In HQ 965754, CPB determined that the CVS exhaust gas dilution system was classified in heading 8479, HTSUS, as machinery having individual functions, not specified elsewhere. The CVS system considered in HQ 965754 is analogous to the auto-sampler that was the subject of NY 899900, in that both devices were used to collect and prepare samples for analysis by another machine. Furthermore, neither the CVS nor the auto-sampler was capable of performing any analysis of the content of the samples that they prepared and collected.

The ENs specifically lists chromatographs as among the devices that are included in heading 9027, HTSUS. In describing chromatographs, EN 90.27(24) states:

> **Chromatographs** (such as gas-, liquid-, ion- or thin-layer chromatographs) for the determination of gas or liquid components. The gas or liquid to be analysed is passed through columns or thin layers of absorbent material and then measured by means of a detector. The characteristics of the gases or liquids under analysis are indicated by the time taken for them to pass through the columns or thin layers of absorbent material, while the quantity of the different components to be analysed is indicated by the strength of the output signal from the detector.

In other words, according to the ENs, a chromatograph measures characteristics of gases or liquids. The gases or liquids are usually analyzed by passing them through columns or thin layers of absorbent material, and the examined materials are then measured by means of a detector. In this instance, unlike a chromatograph, the auto-sampler performs no analytical operations on its own. Rather, the function of the auto-sampler is to prepare and feed the correct volume of sample liquids or gases to a chromatograph so that the chromatograph can analyze them. In operating, the auto-sampler

uses pumps, motors, and syringes to repeatedly to withdraw specific volumes of material from test vials for analysis by the chromatograph. To perform its function, the auto-sampler is attached or mounted onto the chromatograph.

While the auto-sampler cannot be considered a chromatograph in itself because it performs a different function than a chromatograph, we note that it is attached to a chromatograph and that heading 9027, HTSUS, includes the term "parts and accessories". Therefore, in classifying the auto-sampler, we believe that we must examine whether the auto-sampler could be considered as a part or an accessory to the apparatus that it is mounted on, the chromatograph.

CBP generally will consider an article to be a part if: it is combined with other articles to be used; or it is an integral, constituent or component part, without which the article to which it is joined could not function; or it aids in the safe and efficient operation of the main article; or it is identifiable by shape or other characteristics as an article solely or principally used as a part. See HQ 966441 dated June 12, 2003. In this instance, we believe that the auto-sampler should not be considered as a part of a chromatograph because a chromatograph can still perform its function of analyzing gases and liquids even without an auto-sampler being attached to it.

With regard to accessories, in HQ 965467, dated September 17, 2002, CBP explained the meaning of the term accessory by stating:

> The term 'accessory' is not defined in either the tariff schedule or the Explanatory Notes. An accessory is generally an article which is not necessary to enable the goods with which it is used to fulfill their intended function. An accessory must be identifiable as being intended solely or principally for use with a specific article. Accessories are of secondary importance, not essential in and of themselves. They must, however, somehow contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principle article, widen the range of its uses, or improve its operation).

In performing its function, the auto-sampler is attached to the chromatograph, and it is intended for use solely with a chromatograph. It also contributes to the effectiveness of a chromatograph by making it more convenient to use the chromatograph for analyzing materials by mechanizing the processes of preparing and injecting samples into the Chromatograph. Without the auto-sampler, the samples would have to be fed to the chromatograph by hand. Thus, based on the above explanation of the term accessory, it appears that the auto-sampler could be described as an accessory of a chromatograph.

While the auto-sampler may seem to meet the criteria of an accessory for a chromatograph of heading 9027, HTSUS, however, when Legal Note 2(a) to Chapter 90, HTSUS, is applied, we believe that the auto-sampler cannot be classified in heading 9027, HTSUS. Legal Note 2(a) in Chapter 90, HTSUS, which is applicable for the classification of accessories to articles of Chapter 90, HTSUS, states:

> Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8485 8548 or 9033) are in all cases to be classified in their respective headings;

Therefore, because of Legal Note 2(a) to Chapter 90, in classifying the auto-sampler, we have examined if it is included in any of the headings in chapters 84, 85, or 91. Accordingly, we note that one of the alternative proposed headings, 8479, HTSUS, is within chapter 84. Reviewing the ENs, EN 84.79 deals in part with machines, such as the auto-sampler, that perform their function when they are mounted on another more complex machine. EN 84.79 indicates that such machines are classified in heading 8479, HTSUS, if certain conditions are met. It appears that the auto-sampler is this type of machine because it performs its function by being mounted on the chromatograph, which is another more complex machine. EN 84.79 item (B) further explains that such mechanical devices, which cannot perform their function unless they are mounted on another machine or appliance, or are incorporated in a more complex entity, should be deemed as having an individual function and thus are to be classified under heading 84.79, HTSUS, provided that this function:

(i) is distinct from that which is performed by the machine or appliance whereon they are to be mounted, or by the entity they are to be incorporated, and

(ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity.

We believe that the auto-sampler does meet these two requirements. First, it is clearly a machine. Second, the function of drawing samples from the vials and injecting them into the chromatograph is distinct from the chromatograph's function of analyzing gases and liquids. Moreover, the auto-sampler is not an integral and inseparable part of the chromatograph because the chromatograph can function without the auto-sampler being attached to it, as the samples that are to be analyzed can also be hand-fed into the chromatograph. Since the auto-sampler is attached to a chromatograph, and it satisfies the requirements set forth in EN 8479 item (B) for having an individual function, we conclude that the auto-sampler is a machine having an individual function not specified elsewhere. Thus, we find the auto-sampler is included under heading 8479, HTSUS.

In determining whether the auto-sampler should be classified as an accessory of a chromatograph in heading 9027, HTSUS, or as a machine having an individual function not specified elsewhere in heading 8479, HTSUS, as noted above, we are guided by Legal Note 2(a) to Chapter 90, HTSUS. Consequently, although the auto-sampler might be described as an accessory of a chromatograph, because it is also included in a heading of Chapter 84, HTSUS, Legal Note 2(a) in Chapter 90, HTSUS, directs that the auto-sampler must be classified in heading 8479, HTSUS, rather than as an accessory of a chromatograph in heading 9027, HTSUS. Therefore, we conclude that the auto-sampler is classified in heading 8479, HTSUS, as a machine or mechanical appliance having individual functions not specified or included elsewhere. This conclusion is consistent with NY 883067, NY 893932, and NY G82571 (the majority of the other rulings on similar devices).

HOLDING:

In accordance with GRI 1, and by virtue of Legal Note 2(a) to Chapter 90, the auto-sampler is classified in heading 8479, HTSUS. It is specifically provided for in subheading 8479.89.98.97, HTSUS, as: Machines and mechanical appliances having individual functions, not specified or included else-

where in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other: Other: Other, at a general, column one rate of duty of 2.5 percent ad valorem. Duty rates are provided for requester's 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 http://www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY 899900 (issued on July 20, 1994) is revoked.

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

[ATTACHMENT E]

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

HQ 967843
CLA–02 RR:CTF:TCM 967843 RSD
CATEGORY: Classification
TARIFF NO: 8479.89.98

MR. MATHEW K. NAKACHI
GEORGE R. TUTTLE, LAW OFFICES
Three Embarcadero Center, Suite 1160
San Francisco, California 94111

RE: The tariff classification of the Auto-sampler Platform used with the ABI Prism 3100 Genetic Analyzer

DEAR MR. NAKACHI:

The National Commodity Specialist Division of Customs and Border Protection (CBP) issued ruling NY G86629 on January 29, 2001, to you on behalf of Applied Biosystems, regarding the classification of the Auto-Sampler platform for the ABI Prism 3100 Analyzer under the Harmonized Tariff Schedule of the United States (HTSUS). NY G86629 was issued as a correction to NY G84697 dated December 12, 2000, regarding a change in the statistical suffix applied to the classification of the auto-sampler platform. We have reconsidered these rulings, and now believe that the classification of Auto-Sampler platforms specified in NY G86629 and NY G84697 were incorrect. This ruling sets forth the correct classification of the GC Auto-Sampler platform for the ABI Prism 3100 Genetic Analyzer.

FACTS:

The subject merchandise under consideration in NY G86629 and NY G84697 was the Auto-Sampler platform (auto-sampler) that was used with the ABI Prism 3100 Genetic Analyzer (ABI). According to NY G84697, the ABI is a fluorescence-based DNA analysis system using the technologies of capillary electrophoresis and laser fluorescence with CCD recording technology to analyze genetic material. After importation, the ABI DNA sequencer is combined with a computer workstation running proprietary analysis software that performs sequencing analysis.

The auto-sampler platform, designated as part no. 628–0310, was a motorized platform and tray with x-y-z movement functionality. Three stepper motors accomplish the x-y-z movement. The auto-sampler platform moves the DNA samples to the pins of the capillary array and moves a buffer reservoir and an electrode to the pin of the capillary array. The auto-sampler platform causes the DNA sample to be moved so as to insert the capillary array pins into these samples. Once in position, the DNA is automatically drawn up into the capillary array pins. Secondly, the buffer solution is moved so that the pins of the capillary array are submerged in the solution.

In NY G84697, Customs and Border Protection (CBP) determined that the applicable subheading for the auto-sampler platform was subheading 9027.90.5430, HTSUS, which provides for parts and accessories of instruments and apparatus of subheading 9027.20, 9027.30, 9027.40, 9027.50 or 9027.80; of articles of subheading 9027.30.40. In NY G86629, the classification for auto-sampler was changed for a correction in the statistical suffix to subheading 9027.90.5450, HTSUS.

ISSUE:

Whether the auto-sampler is classified under heading 8479, HTSUS, as a machine or mechanical appliance having individual functions not specified or included elsewhere or under heading 9027, HTSUS, as Instruments and apparatus for physical or chemical analysis . . . ; parts and accessories thereof.

LAW AND ANALYSIS:

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

The HTSUS provisions under consideration are as follows:

8479	Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and mechanical appliances:
8479.89	Other:
	Other:
8479.89.98	Other.
	* * *
9027	Instruments and apparatus for physical or chemical analysis for example, polarimeters, refractometers, spectrometers, gas or smoke analysis apparatus); instruments and apparatus for measuring or checking viscosity, porosity, expansion, surface tension or the like; instruments and apparatus for measuring or checking quantities of heat, sound or light (including exposure meters); microtomes; parts and accessories thereof:

9027.91	Microtomes; parts and accessories:
	Parts and Accessories:
	Of electrical instruments and apparatus:
	Other:
9027.90.54	Of instruments and apparatus of subheading 9027.20, 9027.30, 9027.40, 9027.50 or 9027.80

* * *

In NY 883067, dated March 10, 1993; NY 893932, dated February 15, 1994; and NY G82571, dated October 20, 2000, CBP considered the classification of auto-sampler type devices that were very similar to the auto-sampler that was the subject of NY 899900. In these rulings, CBP classified the auto-sampler devices in heading 8479, HTSUS. Like the auto-sampler under consideration in NY 899900, the auto-sampler devices used pumps, motors, and syringes to repeatedly withdraw specific volumes of material from test vials for analysis by another machine or system. In determining that the auto-samplers were classified in heading 8479, HTSUS, the rulings followed the commentary provided in EN 84.79 that heading 8479 HTSUS, covers machines that perform their individual function when they are attached to a separate more complex machine. Thus, the basic rationale for classifying the auto-samplers in heading 8479, HTSUS, was that they performed no analytical operations by themselves and that to perform their individual function they needed to be attached to another machine.

In another ruling, HQ 965754, dated October 4, 2002, CBP considered the classification in the HTSUS of a CVS exhaust gas dilution system that was used with an exhaust gas measuring system. The CVS system was designed to perform exhaust gas tests on gasoline and diesel engines to determine if they met exhaust pollution standards. The system did not measure the actual content of the exhaust gases. Rather, it prepared a diluted sample and measured its volume for another apparatus to volumetrically analyze the chemical content of the gases. In HQ 965754, CPB determined that the CVS exhaust gas dilution system was classified in heading 8479, HTSUS, as machinery having individual functions, not specified elsewhere. The CVS system considered in HQ 965754 is analogous to the auto-sampler that was the subject of NY G84697 and NY G86629, in that both devices were used to collect and prepare samples for analysis by another machine. Furthermore, neither the CVS nor the auto-sampler was capable of performing any analysis of the content of the samples that they prepared and collected.

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

In classifying the auto-sampler, we believe that we must examine whether the auto-sampler could be considered as a part or an accessory to the apparatus that is connected to it, the DNA sequencing machine.

CBP generally will consider an article to be a part if: it is combined with other articles to be used; or it is an integral, constituent or component part, without which the article to which it is joined could not function; or it aids in the safe and efficient operation of the main article; or it is identifiable by shape or other characteristics as an article solely or principally used as a part. See HQ 966441 dated June 12, 2003. In this instance, we believe that the auto-sampler should not be considered as a part of a genetic analyzer because a DNA sequencing machine can still perform its function of analyzing DNA samples even without an auto-sampler being attached to it.

With regard to accessories, in HQ 965467, dated September 17, 2002, CBP explained the meaning of the term accessory by stating:

> The term 'accessory' is not defined in either the tariff schedule or the Explanatory Notes. An accessory is generally an article which is not necessary to enable the goods with which it is used to fulfill their intended function. An accessory must be identifiable as being intended solely or principally for use with a specific article. Accessories are of secondary importance, not essential in and of themselves. They must, however, somehow contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principle article, widen the range of its uses, or improve its operation).

In performing its function, the auto-sampler is attached to the DNA sequencing machine, and it is intended for use solely with this genetic analyzer. It also contributes to the effectiveness of a DNA sequencing machine by making it more convenient to use the DNA sequencing machine for analyzing DNA samples. In other words, the auto-sampler mechanizes the processes of preparing and injecting samples into the genetic analyzer. Without the auto-sampler, the genetic material would have to be fed to the analyzer by hand. Thus, based on the above explanation of the term accessory, it appears that the auto-sampler could be described as an accessory of the DNA sequencing machine.

While the auto-sampler may seem to meet the criteria of an accessory for the DNA sequencing machine of heading 9027, HTSUS, when Legal Note 2(a) to Chapter 90, HTSUS, is applied, we believe that the auto-sampler cannot be classified in heading 9027, HTSUS. Legal Note 2(a) in Chapter 90, HTSUS, which is applicable for the classification of accessories to articles of Chapter 90, HTSUS, states:

> Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8485 8548 or 9033) are in all cases to be classified in their respective headings;

Therefore, because of Legal Note 2(a) to Chapter 90, in classifying the auto-sampler, we have examined if it is included in any of the headings in chapters 84, 85, or 91. Accordingly, we note that one of the alternative proposed headings, 8479, HTSUS, is within Chapter 84, HTSUS. Reviewing the ENs, EN 84.79 deals in part with machines, such as the auto-sampler, that perform their function when they are mounted on another more complex machine. EN 84.79 indicates that such machines are classified in heading 8479, HTSUS, if certain conditions are met. It appears that the auto-sampler is this type of machine because it performs its function by being attached to the DNA sequencing machine, which is another more complex machine. EN 84.79 item (B) further explains that such mechanical devices, which cannot perform their function unless they are mounted on another

machine or appliance, or are incorporated in a more complex entity, should be deemed as having an individual function and thus are to be classified under heading 84.79, HTSUS, provided that this function:

(i) is distinct from that which is performed by the machine or appliance whereon they are to be mounted, or by the entity they are to be incorporated, and

(ii) does not play an integral and inseparable part in the operation of such machine, appliance or entity.

We believe that the auto-sampler does meet these two requirements set forth in EN 84.79 Item (B). First, it is clearly a machine. Second, the function of moving samples to the capillary array and injecting them into the DNA sequencing machine is distinct from the genetic analyzer's function of analyzing DNA samples. Moreover, the auto-sampler is not an integral and inseparable part of the DNA analysis system because the genetic analyzer can function without the auto-sampler being attached to it, as the samples that are to be analyzed can also be put into position for analysis by the ABI DNA sequencing machine through moving them by hand. Since the auto-sampler is connected to a genetic analyzer, and it satisfies the requirements set forth in EN 84.79 item (B) for having an individual function, we conclude that the auto-sampler is a machine having an individual function not specified elsewhere. Thus, we find the auto-sampler is included under heading 8479, HTSUS.

In determining whether the auto-sampler should be classified as an accessory of a DNA sequencing machine in heading 9027, HTSUS, or as a machine having an individual function not specified elsewhere in heading 8479, HTSUS, as noted above, we are guided by Legal Note 2(a) to Chapter 90, HTSUS. Consequently, although the auto-sampler might be described as an accessory of a ABI Prism Analyzer because it is also included in a heading of Chapter 84, HTSUS, Legal Note 2(a) in Chapter 90, HTSUS, directs that the auto-sampler must be classified in heading 8479, HTSUS, rather than as an accessory of a ABI Prism Analyzer in heading 9027, HTSUS. Therefore, we conclude that the auto-sampler platform is classified in heading 8479, HTSUS, as a machine or mechanical appliance having individual functions not specified or included elsewhere. This conclusion is consistent with NY 883067, NY 893932, and NY G82571 (the majority of the other rulings on similar devices).

HOLDING:

In accordance with GRI 1, and by virtue of Legal Note 2(a) to Chapter 90, the auto-sampler platform is classified in heading 8479, HTSUS. It is specifically provided for in subheading 8479.89.98.97, HTSUS, as: Machines and mechanical appliances having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and mechanical appliances: Other: Other: Other: Other, at a general, column one rate of duty of 2.5 percent ad valorem. Duty rates are provided for requester's 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 http://www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY G86629 dated January 29, 2001 and NY G84697 dated on December 12, 2000, are revoked with respect to the classification of the auto-sample platform,

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

19 CFR PART 177

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A METAL IMITATION LUNCH BOX

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

ACTION: Notice of proposed modification of tariff classification ruling letter and revocation of treatment relating to the classification of a metal imitation lunch box.

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 the Bureau of Customs and Border Protection (CBP) intends to modify a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a metal imitation lunch box. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before December 23, 2005.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs 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 Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: David Salkeld, Tariff Classification and Marking Branch, at (202) 572–8781.

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 intends to modify a ruling letter relating to the tariff classification of a metal imitation lunch box. Although in this notice CBP is specifically referring to the modification of the classification of a metal lunch box in New York Ruling Letter (NY) L80711, dated December 1, 2004, (Attachment A), 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., 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 merchandise. Any person involved with 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 L80711, CBP classified the relevant merchandise under subheading 4202.19.0000, HTSUSA, which provides for "Trunks, suitcases, vanity cases, . . . and similar containers; . . . : Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels and similar containers: Other."

Based on our analysis, we now believe the merchandise is classified under subheading 7326.90.10000, HTSUSA, which provides for "Other articles of iron or steel: Other: Of tinplate."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY L80711, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ 967931) (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that is contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: November 4, 2005

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

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY L80711
December 1, 2004
CLA–2–95:RR:NC:SP:225 L80711
CATEGORY: Classification
TARIFF NO.: 9503.70.0000; 4202.19.0000

MS. DIANE M. FLOWERS
MGA ENTERTAINMENT®
16340 Roscoe Blvd., #240
Van Nuys, CA 91406

RE: The tariff classification of a Bratz Babyz Chill-Out Lounge™ from China.

DEAR MS. FLOWERS:

In your letter dated November 2, 2004, on behalf of ABC Int'l Traders, Inc., you requested a tariff classification ruling.

You submitted a sample of a Bratz Babyz Chill-Out Lounge™ identified as item number 296690. The item consists of a set of miniature plastic toy

furniture, appliances, a smoothie bar, bottles, etc. that is intended to simulate a lounge setting. The toys are packaged inside a metal carrying case that is of a kind similar to a lunch box and measures approximately 7-1/2 inches in height x 8 inches in length x 4 inches in depth. The carrying case has a hinged lid, a plastic carrying handle, and an illustrated depiction of a lounge on both of its long sides with the words "Chill-Out Lounge Bratz Babyz."

Although packaged together, the metal carrying case is not the normal or usual packing for the toys, nor is the metal carrying case itself a toy. Therefore, the toy set will be classified separately from the metal carrying case.

Your sample is being returned as you requested.

The applicable subheading for the toys will be 9503.70.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other toys, put up in sets or outfits, and parts and accessories thereof." The rate of duty will be Free.

The applicable subheading for the metal lunchbox will be 4202.19.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Trunks, suitcases, vanity cases . . . and similar containers . . . Other." The rate of duty will be 20 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Alice Wong at 646–733–3026.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967931
CLA–2 RR:CTF:TCM 967931 DSS
CATEGORY: Classification
TARIFF NO.: 7326.90.1000

MS. DIANE FLOWERS
MGA ENTERTAINMENT®
16340 Roscoe Blvd., #240
Van Nuys, CA 91406

RE: Bratz Babyz Chill-Out Lounge™ from China; metal imitation lunch box; NY L80711 Modified

DEAR MS. FLOWERS:

This letter is in reference to New York Ruling Letter (NY) L80711, dated December 1, 2004, which was issued to you on behalf of MGA Entertainment, Inc. (importer) by the Director, National Commodity Specialist Division, Bureau of Customs and Border Protection (CBP). The issue is the clas-

sification of a metal imitation lunch box that is part of the Bratz Babyz Chill-Out Lounge™ under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). After reviewing NY L80711, we have determined that the classification of the metal imitation lunch box under subheading 4202.19.0000, HTSUSA, is incorrect.

FACTS:

In NY L80711, we wrote:

> You submitted a sample of a Bratz Babyz Chill-Out Lounge™ identified as item number 296690. The item consists of a set of miniature plastic toy furniture, appliances, a smoothie bar, bottles, etc. that is intended to simulate a lounge setting. The toys are packaged inside a metal carrying case that is of a kind similar to a lunch box and measures approximately 7-1/2 inches in height x 8 inches in length x 4 inches in depth. The carrying case has a hinged lid, a plastic carrying handle, and an illustrated depiction of a lounge on both of its long sides with the words "Chill-Out Lounge Bratz Babyz."
>
> Although packaged together, the metal carrying case is not the normal or usual packing for the toys, nor is the metal carrying case itself a toy. Therefore, the toy set will be classified separately from the metal carrying case.
>
> Your sample is being returned as you requested.
>
> The applicable subheading for the toys will be 9503.70.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Other toys, put up in sets or outfits, and parts and accessories thereof." The rate of duty will be Free.
>
> The applicable subheading for the metal lunchbox will be 4202.19.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Trunks, suitcases, vanity cases . . . and similar containers . . . Other." The rate of duty will be 20 percent ad valorem.

Based upon a further review of this ruling and a sample provided by the importer, we now believe that the classification of the metal imitation lunch box is incorrect.

ISSUE:

Whether the instant metal imitation lunch box is classified under heading 4202, HTSUS, as a trunk, suitcase, or similar container, or under heading 7326, HTSUS, as an other article of base metal.

LAW AND ANALYSIS:

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

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. While 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 Sys-

tem. The Bureau of Customs and Border Protection (CBP) believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration (2004) are as follows:

4202	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly of mainly covered with such materials or with paper:
	Trunks, suitcases, vanity cases, attaché cases, briefcases, school satchels and similar containers:
4202.19.00	Other.
	* * *
7326	Other articles of iron or steel:
7326.90	Other:
7326.90.10	Of tinplate.

Based upon further examination of the instant article and a review of our previous rulings, it has become apparent that the metal imitation lunch box does not fall under heading 4202, HTSUS.

Heading 4202, HTSUS, provides for the classification of:

> Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly of mainly covered with such materials or with paper.

It is apparent the metal box in NY L80711 is not similar to the articles listed by name and similar containers in the first part of heading 4202, HTSUS, i.e., that aspect which precedes the semi-colon. It is not necessary to consider whether the instant box is listed in the second part of the heading because those articles must be made of specific materials; iron and steel are not enumerated materials. The instant box is not principally used as a travel good and is not a container similar to the goods of heading 4202, HTSUS.

The box is made of metal and is *prima facie* classified in heading 7326, HTSUS. EN 73.26 states in relevant part that heading 7326, HTSUS, includes:

(3) Certain boxes and cases, e.g., tool boxes or cases, not specially shaped or internally fitted to contain particular tools with or without their accessories (see the Explanatory Note to heading 42.02); botanists', etc., collection or specimen cases, trinket boxes; cosmetic or powder boxes or cases; cigarette cases, tobacco boxes, cachou boxes, etc. but **not including** containers of **heading 73.10**, household containers (**heading 73.23**), nor ornaments (**heading 83.06**) [emphasis in orginal].

CBP has issued several rulings in which metal lunch boxes have been classified under heading 7326, HTSUS. *See, e.g.*, HQ 965063, dated April 12, 2002; HQ 965554, dated August 12, 2002; and HQ 965555, dated August 12, 2002.

It should be noted that the instant boxes contain a printed paperboard lining attached to the interior walls. A true lunch box does not normally have a paperboard interior and the interior edges are finished. However, similar to those boxes, the instant box is larger than trinket and casket boxes, but smaller than tool boxes. It is not specially shaped, nor is it internally fitted. The possible uses of the container are similar to the anticipated use of the containers referenced in EN 73.26.

Based upon the information submitted, the instant imitation lunch box is sufficiently similar to other metal lunch boxes classified by CBP under heading 7326, HTSUS, to fall under heading 7326, HTSUS, as well. The box is reportedly made of tinplate. The instant tinplate imitation lunch box is classified under subheading 7326.90.10, HTSUS.

Based on the foregoing analysis, the metal imitation lunch box is classified separately from the toy set under subheading 7326.90.10, HTSUS. The classification of the other items in NY L80711 remain unchanged.

HOLDING:

At GRI 1, the instant metal imitation lunch box is provided for in heading 7326, HTSUSA. It is classified under subheading 7326.90.1000, HTSUSA, as "Other articles of iron or steel: Other: Of tinplate." The 2005 column one, general rate of duty is free.

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/tata/hts.

EFFECT ON OTHER RULINGS:

NY L80711 is MODIFIED in accordance with this decision.

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

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CERTAIN SILK CAPELET

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of a certain silk capelet.

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) intends to revoke one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a certain silk capelet. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before December 23, 2005.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, 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 Joseph Clark of the Trade and Commercial Regulations Branch at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Tariff Classification and Marking Branch, 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, this notice advises interested parties that CBP intends to revoke one ruling letter relating to the tariff classification of a certain silk capelet. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) L82042, dated February 16, 2005 (Attachment A), 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.*, 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. Any person involved with 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 L82042, CBP classified a silk capelet from China in subheading 6217.10.1090, HTSUS, which provides for: "Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Containing 70 percent or more by weight of silk or silk waste, other." Based on our recent review of NY L82042, heading 6214, HTSUS, the Explanatory Notes to heading 6214, and previous CBP rulings on the classification of capelets, we have determined that the classification set forth for the capelet in NY L82042 is incorrect. Based on our review, we now believe that the capelet is classified in subheading 6214.10.1000, HTSUS, which

provides for: "Shawls, scarves, mufflers, mantillas, veils and the like: Of silk or silk waste: Containing 70 percent or more by weight of silk or silk waste."

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to revoke NY L82042 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967889 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: November 4, 2005

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

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY L82042
February 16, 2005
CLA–2–62:RR:NC:3:353 L82042
CATEGORY: Classification
TARIFF NO.: 6217.10.1090

MR. STEPHEN M. ZELMAN
888 Seventh Avenue Suite 4500
New York, NY 10106

RE: The tariff classification of a silk capelet from China.

DEAR MR. ZELMAN:

In your letter dated January 26, 2005, on behalf of Elie Tahari, Ltd., you requested a tariff classification ruling. As requested, the item will be returned to you.

The submitted sample style no. G88OK505 is a woven 100% silk capelet. The sheer lightweight garment fits over the head through a center slit. The article has no collar or means of closure. It covers the shoulders and the upper portion of the wearer's arms. It does not cover the elbows or reach the wearer's waist.

The applicable subheading for Style G88OK505 will be 6217.10.1090, Harmonized Tariff Schedule of the United States (HTS), which provides for other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212; Accessories: containing 70 percent or more by weight of silk or silk waste, other. The rate of duty will be 2.3 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 Kenneth Reidlinger at 646–733–5053.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967889
CLA–2 RR:CTF:TCM 967889 BtB
CATEGORY: Classification
TARIFF NO.: 6214.10.1000

STEPHEN M. ZELMAN, ESQ.
STEPHEN M. ZELMAN & ASSOCIATES
888 Seventh Avenue—Suite 4500
New York, NY 10106

Re: Classification of a silk capelet from China; NY L82042 revoked

DEAr MR. ZELMAN:

On February 16, 2005, the National Commodity Specialist Division ("NCSD") of U.S. Customs and Border Protection ("CBP") issued New York Ruling Letter ("NY") L82042 to you, on behalf of Elie Tahari, Ltd. In NY L82042, CBP classified a silk capelet from China in subheading 6217.10.1090, Harmonized Tariff Schedule of the Untied States Annotated ("HTSUSA"), which provides for: "Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Containing 70 percent or more by weight of silk or silk waste, other."

We have reviewed NY L82042 and have determined that the classification set forth for the capelet in that ruling is incorrect. This ruling, Headquarters Ruling ("HQ") 967889, revokes NY L82042 and provides the correct classification of the capelet.

FACTS:

In NY L82042, the capelet, also identified as "Style No. G88OK505," was described as follows:

> The submitted sample style no. G88OK505 is a woven 100% silk capelet. The sheer lightweight garment fits over the head through a center slit. The article has no collar or means of closure. It covers the shoulders and the upper portion of the wearer's arms. It does not cover the elbows or reach the wearer's waist.

ISSUE:

Whether the classification of the capelet at issue?

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).

The headings under consideration for classification of the capelet are: heading 6202, heading 6211, heading 6214, and heading 6217, HTSUSA. Heading 6202, HTSUSA, provides for: "Women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6204." Heading 6211, HTSUSA, provides for: "Track suits, ski-suits and swimwear; other garments." Heading 6214, HTSUSA, provides for: "Shawls, scarves, mufflers, mantillas, veils and the like." And, heading 6217, HTSUSA, provides for: "Other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212."

Tariff terms are "construed in accordance with their common and popular meaning, in the absence of contrary legislative intent." E.M. Chemicals v. United States, 920 F.2d 910, 913 (Fed. Cir. 1990). "Capelet" is not mentioned in the HTSUSA or the EN. However, the common definition of "capelet" is a "small cape." *See* DICTIONARY OF FASHION, CHARLOTTE MANKEY CALASIBETTA 90 (1998).

Capelets share the features of several articles: shawls, capes, and ponchos. A discussion of the features of each of these articles is relevant to the classification of the instant capelet. *See* HQ 963859, dated June 9, 2000; HQ 964261, HQ 964319, HQ 964320, HQ 964321, HQ 964322, all dated July 7, 2000; and HQ 964232, dated September 1, 2000. These articles are also not defined in the HTSUSA; however, we have recognized that the following definitions represent their common meanings:

Shawl: square or oblong piece of material used for shoulder covering and is worn by women; The term also implies any material used for shoulder or head covering in the accepted sense of today. THE MODERN TEXTILE AND APPAREL DICTIONARY, GEORGE E. LINTON 506 (1973).

Cape: sleeveless outer garment of any length hanging loosely from the shoulders; usually covering back, shoulders, arms. THE FASHION DICTIONARY, MARY BROOKS PICKEN 56 (1973).

> **Poncho:** (1) fashion item shaped like a square or small oblong blanket with a hole in the center for the head, frequently fringed; (2) utilitarian garment consisting of waterproof fabric with a slash in the center for the head; when worn it was used as a rain cape, when not worn it could be used as a blanket. DICTIONARY OF FASHION AT 446.

The capelet at issue is pulled over the head like a poncho, yet its length is not to or below the waist as a typical poncho. Much like a cape or poncho, the item also has no arms or sleeves. Additionally, the size of the item and the amount of coverage provided to the wearer resembles the amount of coverage typically afforded by a shawl in that it does not extend beyond the mid-upper body. Keeping these features in mind, we turn to the headings under consideration in this matter.

Heading 6202, HTSUSA, provides for: "Women's or girls' overcoats, carcoats, capes, cloaks, anoraks (including ski-jackets), windbreakers and similar articles (including padded, sleeveless jackets), other than those of heading 6204." The EN to heading 62.02 state that: the provisions of the EN to heading 61.02 apply, *mutatis mutandis*, to the articles of this heading. The EN to heading 61.02, in turn, state that the provisions of the EN to heading 61.01 apply *mutatis mutandis*, to the articles of heading 61.02. The EN to heading 6101 state that the heading covers a category of garments characterized by the fact that they are generally worn over all other clothing for protection against weather, and notes that capes and ponchos are specifically included in the heading.

While we have acknowledged that the capelet at issue does share certain features with a cape or poncho, it is worn for style and decorative purposes and lacks coverage and other features which would afford the wearer protection from the elements. The short length of the item is not conducive for providing any warmth below the shoulder or chest area. CBP views the length of a garment to be sometimes an influential factor in determining how a garment is classified. In the case at hand, if the article at issue reached to at least the waist, the classification would not be an issue; the article would most likely be described as a poncho within heading 6202, HTSUSA. However, due to the capelet at issue's length and its lack of protection against the weather, we find that it is not described by heading 6202, HTSUSA.

Heading 6211, HTSUSA, provides for: "Track suits, ski suits and swimwear; other garments." The EN to heading 6211 state that the provisions of the EN to heading 61.12 concerning track suits, ski suits and swimwear and of the EN to heading 61.14 concerning other garments apply, *mutatis mutandis*, to the articles of this heading. As we are concerned if the capelet is classified as an "other garment," we consult the EN to heading 6114, HTSUSA, which state, in pertinent part, that the "heading covers knitted or crocheted garments which are not included more specifically in the preceding headings of th[e] Chapter." This EN lists exemplars included in the heading, and none are similar to the capelet at issue. While this heading serves as a basket provision, the garments classifiable in heading 6114, HTSUSA, generally are those garments that either provide a greater degree of coverage to the wearer than the subject capelet or could be worn without any other articles of clothing. In light of these considerations, we find that the capelet at issue in not described by heading 6211, HTSUSA.

Heading 6214, HTSUSA, provides for: "Shawls, scarves, mufflers, mantillas, veils and the like." The EN to the heading state, in pertinent part, that:

> This heading includes:
>
> (1) **Shawls.** These are usually square, triangular or circular, and large enough to cover the head and shoulders.
>
> (2) **Scarves and mufflers.** These are usually square or rectangular and are normally worn around the neck.
>
> (3) **Mantillas.** These are kinds of light shawls or scarves, usually of lace, worn by women over the head and shoulders.

While heading 6214 does not specifically cover the article at issue, it does contain a list of particular items followed by a general phrase, ". . . and the like." It is well settled that when a list of items is followed by a general world or phrase, the rule of *ejusdem generis* is used to determine the scope of the general word or phrase. *See* Totes, Inc. v. United States, 69 F.3d 495, 498 (Fed. Cir. 1995). In classification cases, *ejusdem generis* requires that, for any imported merchandise to fall within the scope of the general term or phrase, the merchandise must possess the same essential characteristics or purposes that united the listed exemplars preceding the general term or phrase. *See* Sports Graphics, Inc. v. United States, 24 F.3d 1390, 1392 (Fed. Cir. 1994). However, a classification under the *ejusdem generis* principle is inappropriate when an imported article has a specific and primary purpose that is inconsistent with that of the listed exemplars in a particular heading." *See* Aves. In Leather, Inc. v. United States, 178 F.3d 1241, 1244 (Fed. Cir. 1999).

CBP has, in multiple rulings, examined whether capelets possess the same essential characteristics and purposes of the exemplars listed in heading 6214, HTSUSA. *See e.g.*, HQ 963859, HQ 964261, HQ 964319, HQ 364320, HQ 364321, HQ 964322, and HQ 964232. In each these rulings, CBP found that capelets do possess the essential characteristics and purposes of shawls, articles listed in heading 6214, HTSUSA. CBP's findings were based on the fact that capelets and shawls are worn in the same manner, are of similar length, and offer similar elemental protection. In each of these rulings, CBP stated that the capelet at issue in that ruling ". . . is intended to be worn in much the same sense as a shawl in that it is to cover the shoulders and to be worn over other garments when the weather would not require a heavier coat or wrap."

We do not find the essential characteristics and purposes of the capelet at issue in this ruling to be different than the capelets that were the subjects of the previous CBP rulings cited above. As a result, we find the capelet at issue to be classified in heading 6214, HTSUSA, pursuant to an *ejusdem generis* analysis.

Heading 6217, HTSUSA, provides for: "Other made up clothing accessories; parts of garments or of clothing accessories, **other than** those of heading 6212." The EN to heading 6217 states that: "This heading covers made up textile clothing accessories, other than knitted or crocheted, not specified or included in other headings of this Chapter or elsewhere in the Nomenclature." As we have established that the capelet at issue is included in heading 6214, HTSUSA, pursuant to an *ejusdem generis* analysis, the article is therefore not classified in heading 6217, HTSUSA.

HOLDING:

The capelet at issue, also identified as "Style No. G88OK505," is classified in heading 6214, HTSUSA. It is specifically provided for in subheading 6214.10.1000, HTSUSA, which provides for: "Shawls, scarves, mufflers, mantillas, veils and the like: Of silk or silk waste: Containing 70 percent or more by weight of silk or silk waste." The applicable column one, general duty rate for the merchandise under the 2005 HTSUSA is 1.2% *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. 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. 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.

EFFECT ON OTHER RULINGS:

NY L82042, dated February 16, 2005, is hereby revoked.

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

19 CFR PART 177

REVOCATION OF FIVE RULING LETTERS, MODIFICATION OF ONE RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN SPORTS EQUIPMENT

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

ACTION: Notice of revocation of five ruling letters, modification of one ruling letter and revocation of treatment relating to the tariff classification of certain sports equipment.

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

revoking five ruling letters, modifying of one ruling letter and revoking treatment relating to the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS), of certain sports equipment. 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 39, Number 30, on July 20, 2005. One comment was received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 22, 2006.

FOR FURTHER INFORMATION CONTACT: Brian Barulich, Tariff Classification and Marking Branch, 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 revoke New York Ruling Letter (NY) K88490, dated August 19, 2004, NY 854193, dated August 6, 1990, NY 801913, dated October 4, 1994, NY E82883, dated June 18, 1999, NY H83396, dated July 30, 2001, and modify Headquarters Ruling (HQ) 086505, dated April 12, 1990, was published in the *Customs Bulletin*, Volume 39, Number 30, on July 20, 2005. One comment was received in response to this notice. This comment recommended a small language change in

regard to the characterization of the sliding pads in the shorts that are the subject of HQ 967622. This recommendation was accepted and an appropriate change was made in that ruling. As stated in the proposed notice, the revocation and modification 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 one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should 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 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 K88490, NY 854193, NY 801913, NY E82883, NY H83396, and HQ 086505, CBP classified textile articles designed to be worn while participating in sports and incorporating hard plastic protective cups in headings other than heading 9506, HTSUS, which provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in [Chapter 95]; swimming pools and wading pools; parts and accessories thereof." In light of the Court of Appeals for the Federal Circuit's decision in Bauer Nike Hockey USA, Inc. v. United States, 393 F.3d 1246 (Fed. Cir., 2004) and our subsequent review of these rulings and the scope of heading 9506, HTSUSA, we now believe that all of the articles at issue in NY K88490, NY 854193, NY 801913, NY E82883, NY H83396 are classified in heading 9506, HTSUSA, as sports equipment. Additionally, we believe that the athletic supporter with protective cup at issue in HQ 086505 is also classified in heading 9506, HTSUSA, as sports equipment.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY K88490, NY 854193, NY 801913, NY E82883, and NY H83396 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 analyses set forth in HQ 967478, HQ 967620, HQ 967621, HQ 967622, and HQ 967623, respectively, which are set forth as attachments to this document. Additionally, CBP is modifying HQ 086505 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 HQ 967619, which is also set forth as the 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. Since its original publication in the *Customs Bulletin*, Volume 39, Number 30, on July 20, 2005, the analyses in HQ 967478, HQ 967619, HQ 967620, HQ 967621, HQ 967622, and HQ 967623 have been expanded to provide greater guidance to the public regarding the scope of merchandise provided for by heading 9506, HTSUS. While the holding in each of these rulings remain unaltered, several paragraphs have been added to the analysis to provide greater detail and clarity on the differences between the protective sports equipment classified in heading 9506, HTSUS, and sports clothing classified in Chapter 61 or 62, HTSUS. The distinction between sports clothing of Chapter 61 or 62 and protective sports equipment of heading 9506, HTSUSA, is amplified. Following Bauer, textile articles worn on the person while participating in sports, incorporating guards, pads, or foam are now evaluated on a case-by-case basis. Articles of this nature will be classified as protective sports equipment in heading 9506, HTSUSA, if they are primarily worn for protection and are akin to the exemplars set forth in the EN to heading 9506. Articles of this nature not primarily worn for protection or offering only minimal protection are not affected by Bauer and will generally be classified as sports clothing in Chapter 61 or 62, HTSUSA.

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

DATED: November 8, 2005

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 967478
November 8, 2005
CLA–2 RR:CTF:TCM 96747 BtB
CATEGORY: Classification
TARIFF NO.: 9506.99.2580

MR. JOHNNY MUCCIARONE
TRADEAID CONSULTANTS, INC.
DELMAR INTERNATIONAL, INC.
10636 Cote De Liesse
Lachine, Quebec H8T 1A5

Re: Classification of hockey jocks; NY K88490 revoked

DEAR MR. MUCCIARONE:

This is in response to your letter dated November 22, 2004, requesting reconsideration of New York Ruling Letter (NY) NY K88490, dated August 19, 2004. In NY K88490, the Bureau of Customs and Border Protection (CBP) classified two models of what were referred to as "hockey protective shorts from Taiwan" in subheading 6114.30.3060 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for: "Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Men's or boys'."

We have reviewed NY K88490 and have determined that the classification of the merchandise at issue is incorrect. This ruling sets forth the correct classification of the 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 NY K88490 was published in the *Customs Bulletin*, Volume 39, Number 30, on July 20, 2005. CBP received one comment during the notice and comment period. This comment recommended a small language change in regard to the characterization of the sliding pads in the shorts that are the subject of Headquarters Ruling (HQ) 967622 and did not pertain to the merchandise at issue in the instant ruling.

FACTS:

The models at issue are specifically identified as the "Itech Jock Regular (200)" and the "Itech Jock Regular (201)." The articles are "hockey jocks," jock straps with removable protective cups permanently attached to 100% polyester knit mesh shorts. The shorts have elasticized waistbands with drawstrings. On the outside, the shorts have four hook and loop attachments (one on the front and back of each leg) that are designed to affix to hockey hose and keep it in place.

In your letter dated November 22, 2004, you assert that the models at issue in NY K88490 were incorrectly classified and are properly classifiable in subheading 9506.99.2580, HTSUSA, which provides for, among other articles, other articles of hockey equipment. You supplemented your letter

dated November 22, 2004 with a letter dated January 6, 2005, in which you present additional arguments supporting classification of the shorts in subheading 9506.99.2580, HTSUSA.

ISSUE:

Whether the Itech Jock Regular (200) and (201) models are classified in heading 9506, HTSUSA, as other articles of hockey equipment.

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 9506, HTSUSA, provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in [Chapter 95]; swimming pools and wading pools; parts and accessories thereof." Sports clothing, alternatively, is classified in Chapter 61 or 62, HTSUSA. Note (e) to Chapter 95, HTSUSA, specifically excludes sports clothing of chapter 61 or 62, HTSUSA, from classification in Chapter 95. Conversely, note 1(t) to Section XI, HTSUSA, excludes "Articles of Chapter 95" from classification in Section XI, HTSUSA, the section of the HTSUSA containing Chapter 61 and Chapter 62.

The ENs to heading 9506 state that the heading covers three categories of merchandise: (A) Articles and equipment for general physical exercise, gymnastics or athletics; (B) Requisites for other sports and outdoor games; and (C) Swimming and paddling pools. The ENs to the heading specifically state that category (B) includes: "Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shinguards."

In Bauer Nike Hockey USA, Inc. v. United States, 393 F.3d 1246 (Fed. Cir., 2004), hereinafter referred to as "Bauer," the Court of Appeals for the Federal Circuit (CAFC) found two styles of hockey pants with textile shells and interior assemblies of hard plastic guards and soft pads to be more specifically described as sports equipment under heading 9506, HTSUSA, than as sports clothing in Chapter 62, HTSUSA. As a consequence, the CAFC found that the articles were excluded from classification as sports clothing in Chapter 62, HTSUSA, pursuant to Note 1(t) to Section XI, and classified the pants in heading 9506, HTSUSA, as sports equipment.

In light of the Bauer decision, textile articles worn on the person while participating in sports incorporating guards, pads, or foam are now evaluated on a case-by-case basis. Articles of this nature will be classified as pro-

tective sports equipment in heading 9506, HTSUSA, if they are primarily worn for protection during sports and afford protection akin to the exemplars set forth in the EN to heading 9506. Generally, they will incorporate thick non-textile protective guards or pads that are designed exclusively for protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions, or flying objects. Generally, these non-textile protective guards will be non-removable or specially-fitted to be inserted into textile parts of the articles, made of hard plastic or thick foam, and make them impractical to use as everyday wearing apparel.

Articles of this nature not primarily worn for protection during sports (e.g., articles worn for comfort, etc.) or offering only minimal protection (with only textile or insubstantial non-textile padding) will generally not meet this criterion. Such articles do not provide protection akin to the exemplars set forth in the EN to heading 9506 and, therefore, are not classified as sports equipment. Rather, such articles are among the articles for use in sports not intended to be classified under heading 9506, HTSUSA. They will generally be classified as sports clothing in Chapter 61 or 62, HTSUSA.

The models at issue are primarily worn for protection during sports and afford protection akin to the exemplars of heading 9506. The styles incorporate a hard plastic protective cup designed exclusively to protect the groin against injury by absorbing blows, collisions, or flying objects while playing hockey. This protective cup is specially-fitted to the jock strap in the models. The features of the models make them especially suited for hockey, the use for which they are designed and marketed, and impractical to use as everyday wearing apparel. Accordingly, we find that the Itech Jock Regular (200) and (201) models are classified in heading 9506, HTSUSA.

HOLDING:

The Itech Jock Regular (200) and (201) models are classified in subheading 9506.99.2580, HTSUSA, which provides for, among other articles, other articles of hockey equipment. The applicable column one, general duty rate under the 2005 HTSUSA is "Free." 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.

EFFECT ON OTHER RULINGS:

NY K88490, dated August 19, 2004, 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 Trade and Facilitation Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967619
November 8, 2005
CLA–2 RR:CTF:TCM 967619 BtB
CATEGORY: Classification
TARIFF NO.: 9506.99.6080

MR. STEPHEN D. GOODWIN
PRESIDENT
SARATOGA FORWARDING CO., INC.
80 Everett Avenue
Chelsea, MA 21500

Re: Classification of Athletic Supporter and Protective Cup; HQ 086505 modified

DEAR MR. GOODWIN:

On April 12, 1990, the U.S. Customs Service, now known as the Bureau of Customs and Border Protection (CBP), issued Headquarters Ruling Letter (HQ) 086505 to you. In HQ 086505, CBP classified an athletic supporter individually and an athletic supporter packaged with a protective cup under subheading 6212.90.0030, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for: "Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: Other, Of man-made fibers or man-made fibers and rubber or plastics."

We have reviewed HQ 086505 and have determined that the classification of the athletic supporter with protective cup is incorrect. This ruling sets forth the correct classification of that article. The classification of the athletic supporter individually was correctly set forth in HQ 086505 and this ruling letter does not modify it.

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 HQ 086505 was published in the *Customs Bulletin*, Volume 39, Number 30, on July 20, 2005. CBP received one comment during the notice and comment period. This comment recommended a small language change in regard to the characterization of the sliding pads in the shorts that are the subject of Headquarters Ruling (HQ) 967622 and did not pertain to the merchandise at issue in the instant ruling.

FACTS:

The athletic supporter is constructed of a 3-inch polyester/spandex waistband. It has 1-inch leg straps and a front pouch that can be closed with small metal snaps. The protective cup is hard plastic with a rubber-like cushioned edge. The protective cup is specially-fitted to be inserted into and housed in the front pouch of the athletic supporter.

ISSUE:

Whether the athletic supporter with protective cup is classified in heading 9506, as other equipment for athletics.

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 9506, HTSUSA, provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in [Chapter 95]; swimming pools and wading pools; parts and accessories thereof." Sports clothing, alternatively, is classified in Chapter 61 or 62, HTSUSA. Note (e) to Chapter 95, HTSUSA, specifically excludes sports clothing of chapter 61 or 62, HTSUSA, from classification in Chapter 95. Conversely, note 1(t) to Section XI, HTSUSA, excludes "Articles of Chapter 95" from classification in Section XI, HTSUSA, the section of the HTSUSA containing Chapter 61 and Chapter 62.

The ENs to heading 9506 state that the heading covers three categories of merchandise: (A) Articles and equipment for general physical exercise, gymnastics or athletics; (B) Requisites for other sports and outdoor games; and (C) Swimming and paddling pools. The ENs to the heading specifically state that category (B) includes: "Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shinguards."

In Bauer Nike Hockey USA, Inc. v. United States, 393 F.3d 1246 (Fed. Cir., 2004), hereinafter referred to as "Bauer," the Court of Appeals for the Federal Circuit (CAFC) found two styles of hockey pants with textile shells and interior assemblies of hard plastic guards and soft pads to be more specifically described as sports equipment under heading 9506, HTSUSA, than as sports clothing in Chapter 62, HTSUSA. As a consequence, the CAFC found that the articles were excluded from classification as sports clothing in Chapter 62, HTSUSA, pursuant to Note 1(t) to Section XI, and classified the pants in heading 9506, HTSUSA, as sports equipment.

In light of the Bauer decision, textile articles worn on the person while participating in sports, incorporating guards, pads, or foam are now evaluated on a case-by-case basis. Articles of this nature will be classified as protective sports equipment in heading 9506, HTSUSA, if they are primarily worn for protection during sports and afford protection akin to the exemplars set forth in the EN to heading 9506. Generally, they will incorporate thick non-textile protective guards or pads that are designed exclusively for protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions, or flying objects. Generally, these non-textile protective guards will be non-

removable or specially-fitted to be inserted into textile parts of the articles, made of hard plastic or thick foam, and make them impractical to use as everyday wearing apparel.

Articles of this nature not primarily worn for protection during sports (e.g., articles worn for comfort, etc.) or offering only minimal protection (with only textile or insubstantial non-textile padding) will generally not meet this criterion. Such articles do not provide protection akin to the exemplars set forth in the EN to heading 9506 and, therefore, are not classified as sports equipment. Rather, such articles are among the articles for use in sports not intended to be classified under heading 9506, HTSUSA. They will generally be classified as sports clothing in Chapter 61 or 62, HTSUSA.

The subject athletic supporter with protective cup is primarily worn for protection during sports and affords protection akin to the exemplars of heading 9506. It incorporates a hard plastic protective cup designed exclusively to protect the groin against injury by absorbing blows, collisions, or flying objects while participating in sports. This protective cup is specially-fitted to the athletic supporter. The features of the article makes it especially suited for sports and impractical to use as everyday wearing apparel. Therefore, we find that the instant athletic supporter with protective cup is classified in heading 9506, HTSUSA.

HOLDING:

The athletic supporter with protective cup is classified in subheading 9506.99.6080, HTSUSA, which provides for, among other articles, "Articles and equipment for general physical exercise, gymnastics, athletics, other sports . . . : Other: Other: Other, Other." The applicable column one, general duty rate under the 2005 HTSUSA is 4 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

HQ 086505, dated April 12, 1990, is hereby modified.

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

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967620
November 8, 2005
CLA–2 RR:CTF:TCM 967620
BtB CATEGORY: Classification
TARIFF NO.: 9506.99.6080

MS. ANN M. WILLIAMS
A.N. DERINGER, INC.
30 West Service Road
Champlain, NY 12919–9703

Re: Classification of hockey accessory kit; NY 854193 revoked

DEAR MS. WILLIAMS:

On August 6, 1990, the U.S. Customs Service, now known as the Bureau of Customs and Border Protection (CBP), issued New York Ruling Letter (NY) 854193 to you on behalf of Holmont Industries, Ltd. In NY 854193, CBP found that four articles packaged together as a "junior hockey accessory kit" did not comprise a set under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) and were, therefore, classified separately under the HTSUSA as follows: an athletic supporter with protective cup, garter belt, and suspenders were each individually classified in subheading 6212.90.0030, HTSUSA, which provides for: "Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: Other, Of man-made fibers or man-made fibers and rubber or plastics;" and shin guard straps were individually classified in subheading 6307.90.9590, HTSUSA, which provides for: "Other made up articles, including dress patterns: Other: Other: Other."

We have reviewed NY 854193 and have determined that the classification of the articles in the junior hockey accessory kit is incorrect. This ruling sets forth the correct classification of the articles.

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 854193 was published in the *Customs Bulletin*, Volume 39, Number 30, on July 20, 2005. CBP received one comment during the notice and comment period. This comment recommended a small language change in regard to the characterization of the sliding pads in the shorts that are the subject of Headquarters Ruling (HQ) 967622 and did not pertain to the merchandise at issue in the instant ruling.

FACTS:

In NY 854193, the articles in the junior hockey kit were described as follows:

> Your first submitted sample, is a textile athletic supporter imported with a protective cup. The athletic supporter is constructed of a 1 1/2 inch elasticized man-made fiber waistband, 3/4 inch elasticized (stet.) leg straps, and a front pouch that holds the protective cup. The cup is plastic with a rubber-like cushioned edge. If the cup is imported with

the supporter it is considered as a part of the supporter and classified as such. If the cup was imported alone, it would be classified under chapter 95.

Your second submitted sample is a garter belt of elasticized man-made fiber, one inch wide and secured by a metal buckle. The belt has four metal and plastic garter grips attached to two 3 inch long elasticized straps that are sewn onto the belt. The third sample is suspenders of elasticized man-made fibers with adjustable straps, metal buckles, and is attached to the pants by vinyl inverted U-shaped fasteners with a place for the buttons at the bottom of the U. The last sample is four shin guard straps that attach a shin guard to the player's leg. The straps are 3/4 inch wide and 12 inches long with a hook and loop closure.

While not stated in NY 854193, the suspenders and garter belt are specifically designed for hockey. The suspenders are specifically designed to attach to hockey pants with their U-shaped fasteners and the garter belt is specifically designed to hold hockey hose. As a consequence, the suspenders and garter belt are only suitable to be worn while playing hockey and not as normal wearing apparel.

ISSUE:

Whether the articles in the hockey accessory kit comprise a set under the HTSUSA. If the articles do comprise a set, what is the classification of the set under the 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).

The hockey accessory kit consists of four individual components. The kit cannot be classified pursuant to GRI 1 because the components are classifiable in different headings (the headings covering each article if imported separately are set forth below). Since no single heading describes all of the products in the accessory kit, the components must either be considered as a set under GRI 3(b) or classified individually.

The components constitute "goods put up in sets for retail sale" if they satisfy the criteria set forth in EN (X) to GRI 3(b). Under this EN, goods are classified as sets put up for retail sale if they:

(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).

In this instance, the goods are *prima facie* classifiable in at least two headings. They are put up together to equip a hockey player. Each of the articles in the kit will be worn while playing. The goods are packaged together as a "junior hockey accessory kit" in a manner suitable for direct sale to the consumer. In light of the above, we find that they constitute "goods put up in sets for retail sale" and are classifiable accordingly pursuant to GRI 3(b).

In order to determine the essential character of the goods put up in the set, we look to EN VIII to GRI 3(b), which provides the following guidance:

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

In this case, each of the goods in the accessory kit serves a unique and important purpose. Each article protects a player or helps to keep equipment or clothing securely in place. For this reason, we find that no component imparts the essential character to the set.

GRI 3(c) provides that: "When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration." The headings that equally merit consideration are the headings covering the components in the set if they were imported individually. In this instance, the hockey garter belt and the hockey suspenders in the set are individually classified in heading 6212, HTSUSA, which provides for: "Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted." Additionally, the hockey shin guard straps in the set are individually classified in heading 6307, HTSUSA, which provides for: "Other made up articles, including dress patterns." And, pursuant to the analysis set forth below, the athletic supporter with protective cup is classified in heading 9506, HTSUSA, which provides for: "Articles and equipment for general physical exercise, gymnastics, athletics, other sports. . . ." Of the three headings meriting consideration, heading 9506, HTSUSA, covering the athletic supporter with protective cup, occurs last.

Heading 9506, HTSUSA, provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in [Chapter 95]; swimming pools and wading pools; parts and accessories thereof." Sports clothing, alternatively, is classified in Chapter 61 or 62, HTSUSA. Note (e) to Chapter 95, HTSUSA, specifically excludes sports clothing of chapter 61 or 62, HTSUSA, from classification in Chapter 95. Conversely, note 1(t) to Section XI, HTSUSA, excludes "Articles of Chapter 95" from classification in Section XI, HTSUSA, the section of the HTSUSA containing Chapter 61 and Chapter 62.

The ENs to heading 9506 state that the heading covers three categories of merchandise: (A) Articles and equipment for general physical exercise, gymnastics or athletics; (B) Requisites for other sports and outdoor games; and (C) Swimming and paddling pools. The ENs to the heading specifically state

that category (B) includes: "Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shinguards."

In Bauer Nike Hockey USA, Inc. v. United States, 393 F.3d 1246 (Fed. Cir., 2004), hereinafter referred to as "Bauer," the Court of Appeals for the Federal Circuit (CAFC) found two styles of hockey pants with textile shells and interior assemblies of hard plastic guards and soft pads to be more specifically described as sports equipment under heading 9506, HTSUSA, than as sports clothing in Chapter 62, HTSUSA. As a consequence, the CAFC found that the articles were excluded from classification as sports clothing in Chapter 62, HTSUSA, pursuant to Note 1(t) to Section XI, and classified the pants in heading 9506, HTSUSA, as sports equipment.

In light of the Bauer decision, textile articles worn on the person while participating in sports, incorporating guards, pads, or foam are now evaluated on a case-by-case basis. Articles of this nature will be classified as protective sports equipment in heading 9506, HTSUSA, if they are primarily worn for protection during sports and afford protection akin to the exemplars set forth in the EN to heading 9506. Generally, they will incorporate thick non-textile protective guards or pads that are designed exclusively for protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions, or flying objects. Generally, these non-textile protective guards will be non-removable or specially-fitted to be inserted into textile parts of the articles, made of hard plastic or thick foam, and make them impractical to use as everyday wearing apparel.

Articles of this nature not primarily worn for protection during sports (e.g., articles worn for comfort, etc.) or offering only minimal protection (with only textile or insubstantial non-textile padding) will generally not meet this criterion. Such articles do not provide protection akin to the exemplars set forth in the EN to heading 9506 and, therefore, are not classified as sports equipment. Rather, such articles are among the articles for use in sports not intended to be classified under heading 9506, HTSUSA. They will generally be classified as sports clothing in Chapter 61 or 62, HTSUSA.

The athletic supporter with protective cup is primarily worn for protection during sports and affords protection akin to the exemplars of heading 9506. It incorporates a hard plastic protective cup designed exclusively to protect the groin against injury by absorbing blows, collisions, or flying objects while playing hockey. This protective cup is specially-fitted to the front pouch on the athletic supporter. The features of the article makes it especially suited for sports and impractical to use as everyday wearing apparel. Accordingly, we find that the athletic supporter with protective cup is classified in heading 9506, HTSUSA.

HOLDING:

The four articles packaged together as a "junior hockey accessory kit" comprise a set under the HTSUSA. The kit is classified pursuant to GRI 3(c) in subheading 9506.99.6080, HTSUSA, which provides for, among other articles, "Articles and equipment for general physical exercise, gymnastics, athletics, other sports . . . : Other: Other: Other, Other." While the articles in the kit have been put up together to meet the need of equipping a hockey player, the article on which classification of the set is based, the athletic supporter with protective cup, is used generally in athletics and sports, not solely or principally in hockey. Accordingly, the set is not classified in the

subheading covering hockey equipment (9506.99.2580, HTSUSA). The applicable column one, general duty rate under the 2005 HTSUSA is 4 percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY 854193, dated August 6, 1990, 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 Trade and Facilitation Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967621
November 8, 2005
CLA–2 RR:CTF:TCM 967621 BtB
CATEGORY: Classification
TARIFF NO.: 9506.99.6080

MS. SUSAN ANDRIUZZO
KEN HAMANAKA CO., INC.
5777 West Century Blvd.
Los Angeles, CA 90045

Re: Classification of Athletic Supporter and Protective Cup; NY 801913 revoked

DEAR MS. ANDRIUZZO:

On October 4, 1994, the U.S. Customs Service, now known as the Bureau of Customs and Border Protection (CBP), issued New York Ruling Letter (NY) 801913 to you on behalf of Pam & Frank (USA) Industrial Co, Ltd. In NY 801913, CBP classified an athletic supporter imported with a protective cup under subheading 6212.90.0030, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for: "Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted: Other, Of man-made fibers or man-made fibers and rubber or plastics."

We have reviewed NY 801913 and have determined that the classification of the athletic supporter with protective cup is incorrect. This ruling sets forth the correct classification of that 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 801913 was published in the *Customs Bulletin*, Volume 39, Number 30, on July 20, 2005. CBP received one comment during the notice and comment period. This comment recommended a small language change in regard to the character-

ization of the sliding pads in the shorts that are the subject of Headquarters Ruling (HQ) 967622 and did not pertain to the merchandise at issue in the instant ruling.

FACTS:

The athletic supporter is recognized as the "Style 80–02–44." It is constructed of a 3-inch elasticized man-made fiber waistband. It has 1-inch elasticized leg straps and a front pouch. The protective cup is hard plastic with a rubber-like cushioned edge. The protective cup is specially-fitted to be inserted into and housed in the front pouch of the athletic supporter.

ISSUE:

Whether the athletic supporter with protective cup is classified in heading 9506, as other equipment for athletics.

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 9506, HTSUSA, provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in [Chapter 95]; swimming pools and wading pools; parts and accessories thereof." Sports clothing, alternatively, is classified in Chapter 61 or 62, HTSUSA. Note (e) to Chapter 95, HTSUSA, specifically excludes sports clothing of chapter 61 or 62, HTSUSA, from classification in Chapter 95. Conversely, note 1(t) to Section XI, HTSUSA, excludes "Articles of Chapter 95" from classification in Section XI, HTSUSA, the section of the HTSUSA containing Chapter 61 and Chapter 62.

The ENs to heading 9506 state that the heading covers three categories of merchandise: (A) Articles and equipment for general physical exercise, gymnastics or athletics; (B) Requisites for other sports and outdoor games; and (C) Swimming and paddling pools. The ENs to the heading specifically state that category (B) includes: "Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shinguards."

In Bauer Nike Hockey USA, Inc. v. United States, 393 F.3d 1246 (Fed. Cir., 2004), hereinafter referred to as "Bauer," the Court of Appeals for the Federal Circuit (CAFC) found two styles of hockey pants with textile shells and interior assemblies of hard plastic guards and soft pads to be more specifically described as sports equipment under heading 9506, HTSUSA, than as sports clothing in Chapter 62, HTSUSA. As a consequence, the CAFC

found that the articles were excluded from classification as sports clothing in Chapter 62, HTSUSA, pursuant to Note 1(t) to Section XI, and classified the pants in heading 9506, HTSUSA, as sports equipment.

In light of the Bauer decision, textile articles worn on the person while participating in sports, incorporating guards, pads, or foam are now evaluated on a case-by-case basis. Articles of this nature will be classified as protective sports equipment in heading 9506, HTSUSA, if they are primarily worn for protection during sports and afford protection akin to the exemplars set forth in the EN to heading 9506. Generally, they will incorporate thick non-textile protective guards or pads that are designed exclusively for protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions, or flying objects. Generally, these non-textile protective guards will be non-removable or specially-fitted to be inserted into textile parts of the articles, made of hard plastic or thick foam, and make them impractical to use as everyday wearing apparel.

Articles of this nature not primarily worn for protection during sports (e.g., articles worn for comfort, etc.) or offering only minimal protection (with only textile or insubstantial non-textile padding) will generally not meet this criterion. Such articles do not provide protection akin to the exemplars set forth in the EN to heading 9506 and, therefore, are not classified as sports equipment. Rather, such articles are among the articles for use in sports not intended to be classified under heading 9506, HTSUSA. They will generally be classified as sports clothing in Chapter 61 or 62, HTSUSA.

The subject athletic supporter with protective cup is primarily worn for protection during sports and affords protection akin to the exemplars of heading 9506. It incorporates a hard plastic protective cup designed exclusively to protect the groin against injury by absorbing blows, collisions, or flying objects while participating in sports. This protective cup is specially-fitted to the athletic supporter. The features of the article makes it especially suited for sports and impractical to use as everyday wearing apparel. Therefore, we find that the instant athletic supporter with protective cup is classified in heading 9506, HTSUSA.

HOLDING:

The athletic supporter with protective cup (Style 80–02–44) is classified in subheading 9506.99.6080, HTSUSA, which provides for, among other articles, "Articles and equipment for general physical exercise, gymnastics, athletics, other sports . . . : Other: Other: Other, Other." The applicable column one, general duty rate under the 2005 HTSUSA is 4 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.

EFFECT ON OTHER RULINGS:

NY 801913, dated October 4, 1994, 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 Trade and Facilitation Division.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967622
November 8, 2005
CLA–2 RR:CTF:TCM 967622 BtB
CATEGORY: Classification
TARIFF NO.: 9506.99.6080

MS. GAYLE PIKE
CHARLES M. SCHAYER & CO.
3839 Newport Street
Denver, CO 80207

Re: Classification of sliding short with hard cup; NY E82883 revoked

DEAR MS. PIKE:

On June 18, 1999, the U.S. Customs Service, now known as the Bureau of Customs and Border Protection (CBP), issued New York Ruling Letter (NY) E82883 to you on behalf of SafeTgard. In NY E82883, CBP classified a sliding short with hard cup from Taiwan in subheading 6114.30.3060, Harmonized Tariff Schedule of the United States (HTS), which provides for: "Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Men's or boys'."

We have reviewed NY E82883 and have determined that the classification of the sliding short set forth in that ruling is incorrect. This ruling 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 E82883 was published in the *Customs Bulletin*, Volume 39, Number 30, on July 20, 2005. CBP received one comment from the National Import Specialist recommending a change to the characterization of the sliding pads in the article at issue in this ruling. This recommendation was accepted and an appropriate change was made.

FACTS:

In NY E82883, the sliding short at issue is described as follows:

> The submitted sample is a sliding short with a hard cup. The package calls the item by that name and pictures a baseball player sliding into home plate. The sliding short consists of knit 83% nylon/17% spandex fabric. There are two sliding pads permanently sewn into the garment that consists of 50% cotton/50% polyester fabric that is double layered for protection. There is a pouch for the hard cup on the inside of the short. The high impact shatter resistant vented hard cup has a perimeter foam cushion for comfort. The short fabric offers compression and support while the pad fabric offers protection.

In your May 24, 1999 request for a classification ruling, you describe the item as shorts with a protective cup that will be worn in lieu of a separate athletic supporter and used while participating in the sports of football, hockey and baseball.

ISSUE:

Whether the sliding short with hard cup is classified in heading 9506, HTSUSA, as other equipment for athletics.

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 9506, HTSUSA, provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in [Chapter 95]; swimming pools and wading pools; parts and accessories thereof." Sports clothing, alternatively, is classified in Chapter 61 or 62, HTSUSA. Note (e) to Chapter 95, HTSUSA, specifically excludes sports clothing of chapter 61 or 62, HTSUSA, from classification in Chapter 95. Conversely, note 1(t) to Section XI, HTSUSA, excludes "Articles of Chapter 95" from classification in Section XI, HTSUSA, the section of the HTSUSA containing Chapter 61 and Chapter 62.

The ENs to heading 9506 state that the heading covers three categories of merchandise: (A) Articles and equipment for general physical exercise, gymnastics or athletics; (B) Requisites for other sports and outdoor games; and (C) Swimming and paddling pools. The ENs to the heading specifically state that category (B) includes: "Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shinguards."

In Bauer Nike Hockey USA, Inc. v. United States, 393 F.3d 1246 (Fed. Cir., 2004), hereinafter referred to as "Bauer," the Court of Appeals for the Federal Circuit (CAFC) found two styles of hockey pants with textile shells and interior assemblies of hard plastic guards and soft pads to be more specifically described as sports equipment under heading 9506, HTSUSA, than as sports clothing in Chapter 62, HTSUSA. As a consequence, the CAFC found that the articles were excluded from classification as sports clothing in Chapter 62, HTSUSA, pursuant to Note 1(t) to Section XI, and classified the pants in heading 9506, HTSUSA, as sports equipment.

In light of the Bauer decision, textile articles worn on the person while participating in sports, incorporating guards, pads, or foam are now evaluated on a case-by-case basis. Articles of this nature will be classified as protective sports equipment in heading 9506, HTSUSA, if they are primarily worn for protection during sports and afford protection akin to the exemplars set forth in the EN to heading 9506. Generally, they will incorporate thick non-textile protective guards or pads that are designed exclusively for

protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions, or flying objects. Generally, these non-textile protective guards will be non-removable or specially-fitted to be inserted into textile parts of the articles, made of hard plastic or thick foam, predominate the articles by weight and make them impractical to use as everyday wearing apparel.

Articles of this nature not primarily worn for protection during sports (e.g., articles worn for comfort, etc.) or offering only minimal protection (with only textile or insubstantial non-textile padding) will generally not meet this criterion. Such articles do not provide protection akin to the exemplars set forth in the EN to heading 9506 and, therefore, are not classified as sports equipment. Rather, such articles are among the articles for use in sports not intended to be classified under heading 9506, HTSUSA. They will generally be classified as sports clothing in Chapter 61 or 62, HTSUSA.

The sliding short at issue is primarily worn for protection during sports and affords protection akin to the exemplars of heading 9506. The short incorporates a hard plastic protective cup designed exclusively to protect the groin against injury by absorbing blows, collisions, or flying objects while participating is sports. This protective cup is specially-fitted to the pouch on the inside of the short and predominates the article by weight. The features of the sliding short make it especially suited for wear during sports and impractical to use as everyday wearing apparel. Accordingly, we find that the sliding short with hard cup is classified in heading 9506, HTSUSA.

Note that it is the hard cup in the sliding short that imparts the protective features to the short, which bring it within the scope of heading 9506, HTSUSA. While the sliding shorts have double-layered sliding pads permanently sewn into them, this padding alone is not significant enough to bring the sliding shorts within the scope of heading 9506, HTSUSA.

HOLDING:

The sliding short with hard cup is classified in subheading 9506.99.6080, HTSUSA, which provides for, among other articles, "Articles and equipment for general physical exercise, gymnastics, athletics, other sports . . . : Other: Other: Other, Other." The applicable column one, general duty rate under the 2005 HTSUSA is 4 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.

EFFECT ON OTHER RULINGS:

NY E82883, dated June 18, 1999, 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 Trade and Facilitation Division.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967623
November 8, 2005
CLA–2 RR:CTF:TCM 967623 BtB
CATEGORY: Classification
TARIFF NO.: 9506.99.2580

MR. LANCE KANESHIRO
EASTON SPORTS
7855 Haskell Avenue
Van Nuys, CA 91406–1999

Re: Classification of hockey jocks; NY H83396 revoked

DEAR MR. KANESHIRO:

On July 30, 2001, the U.S. Customs Service, now the Bureau of Customs and Border Protection (CBP), issued New York Ruling Letter (NY) H83396 to you. In NY H83396, CBP classified two styles of what were referred to as "hockey protective shorts" in subheading 6114.30.3060 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for: "Other garments, knitted or crocheted: Of man-made fibers: Other, Other: Men's or boys'."

We have reviewed NY H83396 and have determined that the classification of the merchandise at issue is incorrect. This ruling sets forth the correct classification of the 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 NY H83396 was published in the *Customs Bulletin*, Volume 39, Number 30, on July 20, 2005. CBP received one comment during the notice and comment period. This comment recommended a small language change in regard to the characterization of the sliding pads in the shorts that are the subject of Headquarters Ruling (HQ) 967622 and did not pertain to the merchandise at issue in the instant ruling.

FACTS:

In NY H83396, the two styles of "hockey protective shorts," identified as "Sample 1" and "Sample 2," respectively, are described as follows:

> The submitted samples are hockey protective shorts that are worn under hockey pants and are constructed of knit polyester and nylon fabric. Sample 1 is a mesh short with an internal built-in protective cup and strap. The hard plastic protective cup is removable for ease of washing the garment. The mesh short features a heavy-duty elasticized waist with drawstring and front and rear hook and loop tabs at the base of the legs for attaching additional protective elements. Sample 2, embroidered with "Jock-Plus®" on the right leg, is a stretch short that reaches to mid-thigh with an external built-in protective cup. The hard plastic protective cup is removable for ease of washing the garment. The stretch short features a heavy-duty elasticized waist and front and rear

hook and loop tabs at the base of the legs for attaching additional protective elements.

Although not referred to as such in NY H83396, Sample 1 and Sample 2 are more precisely described as "hockey jocks." The hook and loop tabs at the base of the legs on the styles are designed to attach and hold up hockey socks.

ISSUE:

Whether Sample 1 and Sample 2 are classified in heading 9506, HTSUSA, as other articles of hockey equipment.

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 9506, HTSUSA, provides for "Articles and equipment for general physical exercise, gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in [Chapter 95]; swimming pools and wading pools; parts and accessories thereof." Sports clothing, alternatively, is classified in Chapter 61 or 62, HTSUSA. Note (e) to Chapter 95, HTSUSA, specifically excludes sports clothing of chapter 61 or 62, HTSUSA, from classification in Chapter 95. Conversely, note 1(t) to Section XI, HTSUSA, excludes "Articles of Chapter 95" from classification in Section XI, HTSUSA, the section of the HTSUSA containing Chapter 61 and Chapter 62.

The ENs to heading 9506 state that the heading covers three categories of merchandise: (A) Articles and equipment for general physical exercise, gymnastics or athletics; (B) Requisites for other sports and outdoor games; and (C) Swimming and paddling pools. The ENs to the heading specifically state that category (B) includes: "Protective equipment for sports or games, e.g., fencing masks and breast plates, elbow and knee pads, cricket pads, shinguards."

In Bauer Nike Hockey USA, Inc. v. United States, 393 F.3d 1246 (Fed. Cir., 2004), hereinafter referred to as "Bauer," the Court of Appeals for the Federal Circuit (CAFC) found two styles of hockey pants with textile shells and interior assemblies of hard plastic guards and soft pads to be more specifically described as sports equipment under heading 9506, HTSUSA, than as sports clothing in Chapter 62, HTSUSA. As a consequence, the CAFC found that the articles were excluded from classification as sports clothing in Chapter 62, HTSUSA, pursuant to Note 1(t) to Section XI, and classified the pants in heading 9506, HTSUSA, as sports equipment.

In light of the Bauer decision, textile articles worn on the person while participating in sports, incorporating guards, pads, or foam are now evaluated on a case-by-case basis. Articles of this nature will be classified as protective sports equipment in heading 9506, HTSUSA, if they are primarily worn for protection during sports and afford protection akin to the exemplars set forth in the EN to heading 9506. Generally, they will incorporate thick non-textile protective guards or pads that are designed exclusively for protection against injury, that is, having protective features with the sole or primary function of directly absorbing the impact of blows, collisions, or flying objects. Generally, these non-textile protective guards will be non-removable or specially-fitted to be inserted into textile parts of the articles, made of hard plastic or thick foam, and make them impractical to use as everyday wearing apparel.

Articles of this nature not primarily worn for protection during sports (e.g., articles worn for comfort, etc.) or offering only minimal protection (with only textile or insubstantial non-textile padding) will generally not meet this criterion. Such articles do not provide protection akin to the exemplars set forth in the EN to heading 9506 and, therefore, are not classified as sports equipment. Rather, such articles are among the articles for use in sports not intended to be classified under heading 9506, HTSUSA. They will generally be classified as sports clothing in Chapter 61 or 62, HTSUSA.

The styles at issue are primarily worn for protection during sports and afford protection akin to the exemplars of heading 9506. The styles incorporate a hard plastic protective cup designed exclusively to protect the groin against injury by absorbing blows, collisions, or flying objects while playing hockey. This protective cup is specially-fitted to the front external pocket of the jock in the styles. The features of the styles make them especially suited for hockey, the use for which they are designed and marketed, and impractical to use as everyday wearing apparel. Accordingly, we find that the styles are classified in heading 9506, HTSUSA.

HOLDING:

The hockey jocks identified as Sample 1 and Sample 2 are classified in subheading 9506.99.2580, HTSUSA, which provides for, among other articles, other articles of hockey equipment. The applicable column one, general duty rate under the 2005 HTSUSA is "Free." 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.

EFFECT ON OTHER RULINGS:

NY H83396, dated July 30, 2001, is hereby revoked.

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

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

19 CFR PART 177

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN "SNAPPIN' SLAP BRACELETS"

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

ACTION: Notice of proposed modification of a ruling letter and revocation of treatment relating to the tariff classification of certain "Snappin' Slap Bracelets" under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA").

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") intends to modify a ruling concerning the tariff classification of, among other things, certain "Snappin' Slap Bracelets" and to revoke any treatment CBP has previously accorded to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before December 23, 2005.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Mint Annex, 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 Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, Tariff Classification and Marking Branch: (202) 572–8776.

SUPPLEMENTARY INFORMATION:

Background

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

amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary 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 intends to modify New York Ruling Letter ("NY") K82999, dated March 2, 2004. In that ruling, among other things, merchandise described as "Snappin' Slap Bracelets" (textile covered metal bracelets that are snapped around the wrist) was classified under subheading 9503.70.0000, HTSUSA, which provides for other toys, put up in sets or outfits, and parts and accessories thereof. NY K82999 is set forth as "Attachment A" to this document.

Although in this notice CBP is specifically referring to one ruling, this notice covers any rulings on similar merchandise that may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases; 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, other than the referenced rulings (see above), 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. 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.

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to modify NY K82999 as it pertains to the tariff classification of certain "Snappin'

Slap Bracelets," and any other ruling not specifically identified, to reflect the proper classification of the merchandise under heading 7117, specifically, subheading 7117.19.9000, HTSUSA, which provides for "Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other" pursuant to the analysis set forth in proposed HQ 967932, set forth as "Attachment B" 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: November 9, 2005

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 K82999
March 2, 2004
CLA–2–95:RR:NC:SP:225 K82999
CATEGORY: Classification
TARIFF NO.: 9503.70.0000

BARBARA Y. WIERBICKI
TOMPKINS & DAVIDSON, LLP
One Astor Plaza
1515 Broadway
New York, NY 10036–8901

RE: The tariff classification of Foam Purse Assortment and Tube Package Assortment from China

DEAR MS. WIERBICKI:

In your letter dated February 6, 2004 you requested a tariff classification ruling on behalf of your client Tara Toy Corporation.

The first assortment, Tube Package Assortment, is item number 32990. The three samples provided were all variations on the educational toy craft kit. The first, Snappin' Slap Bracelets, consists of two bracelets bases and stickers, bracelet strips, slide-ons, charms and markers which are used to create, decorate and change the appearance of the bracelets.

The second sample Pretty Pendants & More, consists of various colors of string, numerous colored beads and charms. The third sample, Foam Magnets & Keychains, consists of two refrigerator magnets bases and two keychains bases, and the stickers, gems, glitter glue and foam pieces which are used to decorate the magnets and keychains.

Marketed to very young children, five years of age and older, all of the items in the assortment have detailed instructions and suggestions as to how the user can complete the various projects.

The second assortment, Foam Purse Assortment, is item number 32985. The first sample, Magically Magnetic Hair Styling Set, consists of a foam purse, which also acts as the retail packing. Inside the purse are a barrette and hair comb and various gems, glitter glues, and magnetic charms that can be used to decorate the purse, barrette and comb. The child can use the products just as they are in her role-play as a grown-up lady and she can glamorize the products for her role-play.

We are unable to rule on the final sample, Magically Magnetic Jewelry Set, as we need more information. Your samples are returned as you requested.

The applicable subheading for the Assortment 32990, Tube Package Assortment and Magically Magnetic Hair Styling' Set of Foam Purse Assortment # 32985 will be 9503.70.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for Other toys; Other toys, put up in sets or outfits, and parts and accessories thereof. The rate of duty will be free.

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 Alice J. Wong at 646–733–3026.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967932
CLA–2 RR:CTF:TCM 967932 AML
CATEGORY: Classification
TARIFF NO.: 7117.19.9000

BARBARA Y. WIERBICKI
TOMPKINS & DAVIDSON, LLP
One Astor Plaza
1515 Broadway
New York, NY 10036–8901

RE: "Snappin' Slap Bracelets"; NY K82999 modified

DEAR MS. WIERBICKI:

This letter is in regard to New York Ruling Letter ("NY") K82999, dated March 2, 2004, which was issued to you on behalf of Tara Toy Corporation by the National Commodity Specialist Division, concerning the tariff classification of, among other things, "Snappin' Slap Bracelets" under the Harmonized Tariff Schedule of the United States Annotated ("HTSUSA"). In NY K82999, the "Snappin' Slap Bracelets" were classified under subheading 9503.70.0000, HTSUSA, which provides for "other toys . . . : other toys, put up in sets or outfits, and parts and accessories thereof." We have reconsidered the classification of the "Snappin' Slap Bracelets" and determined that it is incorrect. This letter sets forth the correct classification of those articles. The classification of the other articles considered in NY K82999 remains unchanged.

FACTS:

In NY K82999, we described the "Snappin' Slap Bracelets" as follows:

> The first, Snappin' Slap Bracelets, consists of two bracelets bases and stickers, bracelet strips, slide-ons, charms and markers which are used to create, decorate and change the appearance of the bracelets.

All of these components are packaged as a set for retail sale, and on the package are detailed instructions on how to assemble (insert the metal into the textile sleeve) and decorate (glue cutouts to the textile sleeves) the articles with the included supplies to prepare them to be snapped upon the wrist and worn as personal adornment.

ISSUE:

Whether the "Snappin' Slap Bracelets" are classifiable as imitation jewelry under heading 7117, HTSUS, or as toys under heading 9503, HTSUS?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") in accordance with the General Rules of Interpretation ("GRIs"). GRI 1provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, the remaining GRIs may be applied.

The Harmonized Commodity Description And Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized Sys-

tem. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise. Customs and Border Protection ("CBP") believes the ENs should always be consulted. See T.D. 89–80, published in the Federal Register August 23, 1989 (54 FR 35127, 35128).

The HTSUS provisions under consideration are as follows:

7117	Imitation jewelry:
	Of base metal, whether or not plated with precious metal:
7117.19	Other:
	Other:
7117.19.90	Other.
	* * *
9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.70.00	Other toys, put up in sets or outfits, and parts and accessories thereof.

The ENs to heading 9503, HTSUS, provide, in pertinent part, that:

> This heading covers toys intended essentially for the amusement of persons (children or adults) . . . The heading includes:
>
> (A) All toys not included in headings 95.01 and 95.02. Many of the toys of this heading are mechanically or electrically operated.
>
> These include:
>
> (17) Educational toys (*e.g.*, toy chemistry, printing, sewing and knitting sets).
>
> * * *
>
> Collections of articles, the individual items of which if presented separately would be classified in other headings in the Nomenclature, are classified in this Chapter when they are put up in a form clearly indicating their use as toys (*e.g.*, instructional toys such as chemistry, sewing, etc., sets).
>
> * * *

In *Minnetonka Brands Inc. v. United States*, 110 F. Supp. 1020 (CIT 2000), the court stated in regard to the scope of heading 9503, HTSUS, at 1026–7 that:

> Because heading 9503 is, in relevant part, a principal use provision, classification under this provision is controlled by the principal use "of goods of that class or kind to which the imported goods belong" in the United States at or immediately prior to the date of importation. ARI 1(a) (emphasis added); see *Primal Lite, Inc. v. United States*, 182 F.3d 1362, 1365 (Fed. Cir. 1999) (construing ARI 1(a) as "calling for a determination as to the group of goods that are [**1027] commercially

fungible with the imported goods"); *Group Italglass U.S.A., Inc. v. United States*, 17 C.I.T. 1177, 1177, 839 F. Supp. 866, 867 (1993) (stressing "that it is the principal use of the class or kind of goods to which the imports belonged" at or immediately prior to the dates of importation, "and not the principal use of the specific imports[,] that is controlling under the Rules of Interpretation"). "Principal use" is defined as the use "which exceeds any other single use of the article." Conversion of the Tariff Schedules of the United States Annotated Into the Nomenclature Structure of the Harmonized System: Submitting Report at 34–35 (USITC Pub. No. 1400) (June 1983).

Minnetonka continues at 1027:

> To determine whether the subject imports are of the "class or kind" of merchandise whose principal use is amusement, diversion or play, as Plaintiff claims, or the conveyance or packaging of goods, as Defendant claims, the court examines all pertinent circumstances. *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377 (1976). Factors which have been considered in making this determination include (1) the general physical characteristics of the merchandise; (2) the expectation of the ultimate purchasers; (3) the channels, class or kind of trade in which the merchandise moves; (4) the environment of the sale (*i.e.*, accompanying accessories and the manner in which the merchandise is advertised and displayed); (5) usage, if any, in the same manner as merchandise which defines the class; (6) the economic practicality of so using the import; and (7) the recognition in the trade of the use. *Id.*; see, *e.g. United States v. Border Brokerage Co., Inc.*, 706 F.2d 1579, 1582 (Fed. Cir. 1983); *Hartz Mountain Corp. v. United States*, 19 C.I.T. 1149, 1151, 903 F. Supp. 57, 59–60 (1995); *Kraft, Inc. v. United States*, 16 C.I.T. 483, 489 (1992) (applying *Carborundum* factors). "Susceptibility, capability, adequacy, or adaptability of the import to the common use of the class is not controlling." *Carborundum*, 63 C.C.P.A. at 102, 536 F.2d at 377.

Application of the *Carborundum* factors to the articles at issue yields the following results:

(1) The general physical characteristics of the merchandise: slap bracelets are ultimately designed and intended to be worn as articles of personal adornment. Once the purchaser decides the bracelets are sufficiently decorated, exhausts the decorations provided with the bracelets, decides not to use the decorations, or loses or has no interest in decorating the slap bracelets, the articles can be worn on the wrist to adorn the person.

(2) The expectation of the ultimate purchasers: to wear an article of personal adornment on the wrist.

(3) The channels, class or kind of trade in which the merchandise moves: the articles are designed for children.

(4) The environment of the sale (*i.e.*, accompanying accessories and the manner in which the merchandise is advertised and displayed): the package depicts seven decorated bracelets (contracted into the shape of a bracelet and a girl "holding" an illustration of the bracelet being snapped around her wrist. We reiterate the finite nature of

the act of decorating (exhaustion of supplies, etc.) described in the discussion of *Carborundum* factor 1 above.

(5) Usage, if any, in the same manner as merchandise which defines the class: the amusing use of decoration is finite whereas the use as imitation jewelry lasts as long as the materials or the interest of the wearer last.

(6) The economic practicality of so using the import: the adorning feature of the bracelets imparts the value of the articles.

(7) The recognition in the trade of the use: Snap bracelets are intended to be trendy articles of personal adornment.

The application of the *Carborundum* factors indicates that the articles of a class or kind intended for use as articles of personal adornment, rather than as educational toys sets. While the child can decorate and personalize the snap bracelets, any amusement value provided by the decoration of the bracelets is finite. That is, once the bracelet is decorated to the degree deemed appropriate by the child, the playful characteristic ends. Further, the amusement of decorating is the means to the end – wearing a snap bracelet. The activity of decorating what could be worn as a bracelet does not constitute emulative or educational play; gluing and such are creative activities at best. Thus, we conclude that the "slap bracelets" are not educational toy sets.

Heading 7117 provides for "imitation jewelry". Imitation jewelry is defined in Note 11, Chapter 71 as:

> Articles of jewelry within the meaning of paragraph (a) of note 9, not incorporating natural or cultured pearls, precious or semiprecious stones (natural, synthetic or reconstructed) nor (except as plating or as minor constituents) precious metal or metal clad with precious metal.

Articles of jewelry are described in Note 9 to Chapter 71, in pertinent part, as follows:

> a) Any small objects of personal adornment (gem-set or not) (for example, rings, bracelets, necklaces, brooches, earrings, watch chains, fobs, pendants, tie pins, cuff links, dress studs, religious or other medals and insignia).

The subject articles comprise articles of jewelry; small articles of personal adornment, within the meaning of Note 9 to Chapter 71. They also meet the terms of Note 11 of Chapter 71, as articles of imitation jewelry. Therefore, the snap bracelets are provided for *eo nomine* in heading 7117.

This conclusion comports with that made in several prior rulings: NY L83505, dated March 24, 2005; HQ 088222, dated February 15, 1991 and HQ 088126, dated January 10, 1991. See also NY I85472, dated August 28, 2002 and HQ 082736, dated March 20, 1990, which classified "paper craft" and "crochet and knitting" kits, respectively, outside of heading 9503, HTSUS.

We are cognizant that rulings exist in which beading kits and the like are classified as toys or toy sets under heading 9503, HTSUS. See, for example, the Foam Purse Assortment and the Magically Magnetic Hair Styling Set in the subject ruling. See too Headquarters Ruling Letter 959401, dated April 14, 1997. Those articles are distinguishable because the child creates the en-

tire article (be it necklace, bracelet, etc.) rather than merely decorating an existing snap bracelet.

HOLDING:

At GRI 1, the "Snappin' Slap Bracelets" are classified under heading 7117, specifically under subheading 7117.19.9000, HTSUSA, which provides for "Imitation jewelry: Of base metal, whether or not plated with precious metal: Other: Other: Other". The 2005 general, column rate of duty is 11% *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*.

EFFECT ON OTHER RULINGS:

NY K82999 dated March 2, 2004 is hereby modified as it pertains to the classification of "Snappin' Slap Bracelets."

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

cc: National Commodity Specialist Division
NIS Wong
NIS Mushinske