

Bureau of Customs and Border Protection

General Notices

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

Washington, DC, September 28, 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.*

19 CFR PART 177

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF A CERTAIN SOCCER SHINGUARD

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

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

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 one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a certain soccer shinguard. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. No-

tice proposing these actions and inviting comments on their correctness was published in the *Customs Bulletin*, Volume 39, Number 30, on July 20, 2005. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 11, 2005.

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) H87957 was published in the *Customs Bulletin*, Volume 39, Number 30, on July 20, 2005. No comments were received in response to this notice. As stated in the proposed notice, the revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 H87957, CBP classified a soccer shinguard encased in a knit polyester sock under subheading 6115.93.9020, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for, among other articles, socks of synthetic fabrics. Based on our review of the ruling and a sample of the article and 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), hereinafter "Bauer," we now believe that the article is classified in subheading 9506.99.2000, HTSUSA, which provides for, among other articles, soccer articles and equipment, except balls, and parts and accessories thereof.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY H87957 and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 967738, which is 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 analysis in HQ 967738 has been expanded to provide greater guidance to the public regarding the scope of merchandise provided for by heading 9506, HTSUS. While the holding of HQ 967738 remains 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: September 21, 2005

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

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 967738
September 21, 2005
CLA-2 RR:CR:TE 967738 BtB
CATEGORY: Classification
TARIFF NO.: 9506.99.2000

DAVID M. MURPHY, ESQ.
GRUNFELD, DESIDERIO, LEBOWITZ, SILVERMAN & KLESTADT LLP
399 Park Avenue
25th Floor
New York, NY 10022-4877

Re: Classification of Soccer Shinguards; NY H87957 revoked

DEAR MR. MURPHY:

On February 13, 2002, the Bureau of Customs and Border Protection (CBP) issued New York Ruling Letter (NY) H87957 to Franklin Sports, Inc. ("Franklin"). As you now represent Franklin, this letter is addressed to you.

In NY H87957, CBP classified a soccer shinguard encased in a knit polyester sock under subheading 6115.93.9020, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for, among other articles, ". . . socks. . . : Other: Of synthetic fibers: Other: Other: Other."

We have reviewed NY H87957 and have determined that the classification of the merchandise is incorrect. This ruling, HQ 967738, sets forth the correct classification of the merchandise and revokes NY H87957. Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY H87957 was published in the *Customs Bulletin*, Volume 39, Number 30, on July 20, 2005. CBP received no comments during the notice and comment period that closed on August 20, 2005.

FACTS:

The article at issue is identified as the Franklin "Shin Sock." The "Shin Sock" is a soccer shinguard permanently encased in a knit polyester sock. The shinguard is constructed of a hard-plastic (high density polyethylene)

guard with EVA foam backing. The sock holding the shinguard is made of 100% polyester knit fabric.

ISSUE:

Whether the “Shin Sock” is classified in heading 9506, HTSUSA, as sports 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, shin-guards.”

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 the articles 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 "Shin Sock" at issue is primarily worn for protection during sports and affords protection as a shin guard, an exemplar of protective equipment in the EN to heading 9506. The article incorporates a hard plastic protective guard designed exclusively to protect the shin against injury by absorbing blows, collisions, or flying objects while playing soccer. This hard protective guard is specially-fitted to the polyester sock in which it is encased and it is not removable. The features of the article make it especially suited for playing soccer, the use for which it is designed and marketed, and impractical to use as everyday wearing apparel. In light of the above, we find that the "Shin Sock," like the hockey pants in Bauer, is classified in heading 9506, HTSUSA.

HOLDING:

The soccer shinguard permanently encased in a knit polyester sock identified as the Franklin "Shin Sock" is classified in subheading 9506.99.2000, HTSUSA, which provides for, among other articles, "Articles and equipment for general physical exercise, gymnastics, athletics, other sports . . . : Other: . . . soccer . . . articles and equipment, except balls, and parts and accessories thereof." The applicable column one, general duty rate under the 2005 HTSUSA is "Free." This classification is consistent with the holding in NY G87127, dated February 28, 2001, in which CBP classified a substantially similar article in the same provision.

NY H87957, dated February 13, 2002, is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

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