

Bureau of Customs and Border Protection

General Notices

AGENCY INFORMATION COLLECTION ACTIVITIES: APPROVAL OF COMMERCIAL GAUGERS AND ACCREDITATION OF COMMERCIAL LABORATORIES

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (72 FR 7445) on February 15, 2007, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before May 18, 2007.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to oira_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

CBP encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers

OMB Number: 1651-0053

Form Number: None

Abstract: The Accreditation of Commercial Testing Laboratories and the Approval of Commercial Gaugers are used by individuals or businesses desiring CBP approval to measure bulk products or analyze importations. This recognition is required of businesses wishing to perform such work on imported merchandise.

Current Actions: This submission is being submitted to extend the expiration date with no change to the burden hours. Type of Review: Extension (without change)

Affected Public: Businesses, Institutions

Estimated Number of Respondents: 250

Estimated Time Per Respondent: 1 hour and 48 minutes

Estimated Total Annual Burden Hours: 450

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue

BUREAU OF CUSTOMS AND BORDER PROTECTION

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NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: April 11, 2007

TRACEY DENNING,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, (72 FR 19548)]

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

**AGENCY INFORMATION COLLECTION ACTIVITIES:
DISTRIBUTION OF CONTINUED DUMPING AND SUBSIDY
OFFSET TO AFFECTED DOMESTIC PRODUCERS**

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

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (72 FR 7445) on February 15, 2007, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before May 18, 2007.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to oir_submission@omb.eop.gov or faxed to (202) 395-6974.

SUPPLEMENTARY INFORMATION:

CBP encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104-13). Your comments should address one of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Distribution of Continued Dumping and Subsidy Offset to Affected Domestic Producers

OMB Number: 1651-0086

Form Number: N/A

Abstract: The collection of information is required to implement the duty preference provisions of the Continued Dumping and Subsidy Offset Act of 2000, by prescribing the administrative procedures under which anti-dumping and countervailing duties are assessed on imported products.

Current Actions: This submission is being submitted to extend the expiration date with a change in the burden hours.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 2000

Estimated Time Per Respondent: 1 hour

Estimated Total Annual Burden Hours: 2000 hours

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue

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NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: April 11, 2007

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, (72 FR 19549)]

9111-14

Notice of Cancellation of Customs Broker License Due to Death of
the License Holder

AGENCY: Bureau of Customs and Border Protection, U.S. Depart-
ment of Homeland Security

ACTION: General Notice

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the
Code of Federal Regulations at section 111.51(a), the following indi-
vidual Customs broker licenses and any and all permits have been
cancelled due to the death of the broker:

<u>Name</u>	<u>License #</u>	<u>Port Name</u>
Darlene A. Liskiewicz	6410	Buffalo
Brenda K. Chronister	20443	St. Louis

DATED: April 16, 2007

DANIEL BALDWIN,
*Assistant Commissioner,
Office of International Trade.*

[Published in the Federal Register, (72 FR 20921)]

9111-14

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Depart-
ment of Homeland Security

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as
amended, (19 USC 1641) and the Customs Regulations (19 CFR
111.51), the following Customs broker licenses are cancelled without
prejudice.

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
Martin, Kassatly & Company	13056	San Francisco
Cornerstone Logistics, Inc.	17392	San Francisco
Braverman Enterprise, Inc.	21051	Los Angeles
BLG, Inc.	7360	New York
Carol L. Page	7627	Seattle

DATED: April 16, 2007

DANIEL BALDWIN,
*Assistant Commissioner,
Office of International Trade.*

[Published in the Federal Register, (72 FR 20921)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, April 25, 2007,

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

SANDRA L. BELL,
*Executive Director,
Regulations and Rulings,
Office of International Trade.*

**PROPOSED MODIFICATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
CLASSIFICATION AND MARKING OF TEXTILE
GRADUATION CAPS AND GOWNS**

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

ACTION: Notice of proposed modification of a tariff classification and marking ruling letter and revocation of any treatment only as it relates to the country of origin marking determination regarding the words "Assembled in Mexico".

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 Imple-

mentation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to modify one ruling letter relating to the tariff classification and marking under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of textile graduation caps and gowns. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before June 8, 2007.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of International Trade, 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 Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Tariff Classification and Marking Branch, (202) 572–8822.

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. section 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 one ruling letter pertaining to the tariff classification and marking of textile graduation caps and gowns. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) F84383, dated April 4, 2000 (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 in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY F84383, CBP held that the words "Assembled in Mexico" would not be an acceptable country of origin marking for the imported cap and gown. Although NY F84383 correctly determined that the graduation cap and gown are "wholly assembled" in a single country, Mexico, the ruling further noted that the U.S. origin fabrics used to make the graduation cap and gown were cut to shape in Mexico. As such, it was held that the cap and gown could not be marked "Assembled in Mexico" because the U.S. fabric had not been exported in a condition ready for assembly without further fabrication. However, since the subject merchandise was the result of an assembly operation and was finally assembled in Mexico within the meaning of 19 CFR 134.43(e), we now find that the operations involved in manufacturing the merchandise include assembly operations. Therefore, the finished merchandise may be marked "Assembled in Mexico".

Pursuant to 19 U.S.C. 1625(c)(1), CBP intends to modify NY F84383, only with respect to the determination made as to the country of origin marking, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect that the cap and gown produced as described in NY F84383 may be marked "Assembled in Mexico" pursuant to the analysis set forth in proposed Headquarters Ruling Letter (HQ) 967834 (Attachment B). Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to re-

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voke 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: April 18, 2007

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 F84383

April 4, 2000

CLA-2-RR:NC:3:353 F84383

CATEGORY: Classification

MR. PAUL WILLETTE
TOWER GROUP INTERNATIONAL
2400 Marine Avenue
Redondo Beach, CA 90278-1103

RE: Classification, country of origin and country of origin marking determination for a graduation cap and gown; 19 CFR 102.21(c)(2); tariff shift; Article 509.

DEAR MR. WILLETTE:

This is in reply to your letter dated March 8, 2000, on behalf of Jostens Corporation, requesting a classification, country of origin and country of origin marking determination for a graduation cap and gown which will be imported into the United States. A detailed step-by-step description of the manufacturing process was supplied, as well as samples of all component parts prior to assembly and the finished products.

FACTS:

The subject merchandise consists of a "One Way" Graduation Cap and Gown. The "One Way" BDG Graduation Cap and Gown are composed of woven 100% textured polyester fabric; the "One Way" Treasure Graduation Cap and Gown are composed of woven 100% acetate taffeta fabric. The graduation cap, or mortarboard, features a two panel lined crown with a 9 1/2 inch square flat top with a fabric covered button. The graduation gown is full length and features a pleated front, long sleeves and full front zippered closure.

Presently the fabric for the cap and gown is formed in the United States. The fabric is cut to shape and shipped with other components that are purchased in the United States to Mexico. In Mexico, the components are fully assembled and packed before being returned to the U.S.

The manufacturing operation is being changed as follows:

“One Way” Graduation Cap

United States

Fabric is formed

Mexico

Fabric is cut to shape The Mexican manufacturer obtains components (countries of origin not yet known) - glue, masking tape, aluminum button, elastic, wonder thread, polyester thread, pivot tack, cap disk, bleached cap mortarboard, kraft mortarboard and interlining Cut to shape parts and components are completely assembled Finishing, bagging and boxing

“One Way” Graduation Gown

United States

Fabric is formed

Mexico

Fabric is cut to shape The Mexican manufacturer obtains components (countries of origin not yet known) - zipper, label and thread Cut to shape parts and components are completely assembled Finishing, bagging and boxing

ISSUE:

What are the classification and country of origin of the subject merchandise?

CLASSIFICATION:

The applicable subheading for the “One Way” Graduation Cap will be 6505.90.8090, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for “Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed . . . : Other: Of man-made fibers: Not in part of braid, Other: Other: Other.” The rate of duty will be 20¢ per kilogram + 7.3% ad valorem.

The applicable subheading for the “One Way” Graduation Gown will be 6211.43.0091, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for “Track suits, ski-suits and swimwear; other garments: Other garments, women’s or girls’: Of man-made fibers, Other.” The rate of duty will be 16.4% ad valorem.

The “One Way” Graduation Cap and Gown fall within textile category designation 659. The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the U.S. Customs Service Textile Status Report, an internal issuance of the U.S. Customs Service, which is available at the Customs Web Site at WWW.CUSTOMS.GOV. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

COUNTRY OF ORIGIN - LAW AND ANALYSIS:

On December 8, 1994, the President signed into law the Uruguay Round Agreements Act. Section 334 of that Act (codified at 19 U.S.C. 3592) provides new rules of origin for textiles and apparel entered, or withdrawn from warehouse, for consumption, on and after July 1, 1996. On September 5, 1995, Customs published Section 102.21, Customs Regulations, in the Federal Register, implementing Section 334 (60 FR 46188). Thus, effective July

1, 1996, the country of origin of a textile or apparel product shall be determined by sequential application of the general rules set forth in paragraphs (c)(1) through (5) of Section 102.21.

Paragraph (c)(1) states that "The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced." As the subject merchandise is not wholly obtained or produced in a single country, territory or insular possession, paragraph (c)(1) of Section 102.21 is inapplicable.

Paragraph (c)(2) states that "Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country of origin of the good is the single country, territory, or insular possession in which each of the foreign materials incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section:"

Paragraph (e) in pertinent part states that "The following rules shall apply for purposes of determining the country of origin of a textile or apparel product under paragraph (c)(2) of this section:"

HTSUS	Tariff shift and/or other requirements
6505.90	(1) If the good consists of two or more components, a change to subheading 6505.90 from any other heading, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

HTSUS	Tariff shift and/or other requirements
6210-6212	(1) If the good consists of two or more component parts, a change to an assembled good of heading 6210 through 6212 from unassembled components, provided that the change is the result of the good being wholly assembled in a single country, territory, or insular possession.

As the graduation cap and gown are wholly assembled in a single country, that is, Mexico, as per the terms of the tariff shift requirement, country of origin is conferred in Mexico.

COUNTRY OF ORIGIN MARKING

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

The country of origin marking requirements for a "good of a NAFTA country" are also determined in accordance with Annex 311 of the North American Free Trade Agreement ("NAFTA"), as implemented by section 207 of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat 2057) (December 8, 1993) and the appropriate Customs Regulations. The Marking Rules used for determining whether a good is a good of a NAFTA country are contained in Part 102, Customs Regulations. The marking requirements of these goods are set forth in Part 134, Customs Regulations.

Section 134.45(a)(2) of the regulations, provides that "a good of a NAFTA country may be marked with the name of the country of origin in English, French or Spanish." Section 134.1(g) of the regulations, defines a "good of a NAFTA country" as an article for which the country of origin is Canada, Mexico or the United States as determined under the NAFTA Marking Rules.

As provided in section 134.41(b), Customs Regulations (19 CFR 134.41(b)), the country of origin marking is considered conspicuous if the ultimate purchaser in the U.S. is able to find the marking easily and read it without strain.

With regard to the permanency of a marking, section 134.41(a), Customs Regulations (19 CFR 134.41(a)), provides that as a general rule marking requirements are best met by marking worked into the article at the time of manufacture. For example, it is suggested that the country of origin on metal articles be die sunk, molded in, or etched. However, section 134.44, Customs Regulations (19 CFR 134.44), generally provides that any marking that is sufficiently permanent so that it will remain on the article until it reaches the ultimate purchaser unless deliberately removed is acceptable.

You ask whether the proposed marking "Made in Mexico" or "Assembled in Mexico" is an acceptable country of origin marking for the imported graduation cap and gown. A sample with the proposed marking was not submitted with your letter for review.

Regarding the term "assembly," section 10.14(a), Customs Regulations (19 CFR 10.14(a)), provides, in part, that ". . . The components must be in condition ready for assembly without further fabrication at the time of their exportation from the United States . . ." Section 10.16(a), Customs Regulations (19 CFR 10.16(a)), provides, in part, that "The assembly operations performed abroad may consist of any method used to join or fit together solid components, such as welding, soldering, riveting, force fitting, gluing, laminating, sewing, or the use of fasteners . . ."

The U.S. origin fabrics used to make the graduation cap and gown are cut to shape in Mexico. Therefore, they are not exported in condition ready for assembly without further fabrication; the U.S. fabric is not considered assembled in Mexico. The merchandise does not meet the requirements for marking of assembled articles under section 134.43(e), Customs Regulations, (19 CFR 134.44(e)). Therefore, "Assembled in Mexico" is not an acceptable country of origin marking for the imported cap and gown. However, "Made in Mexico" is an acceptable country of origin marking for the imported graduation cap and gown.

The holding set forth above applies only to the specific factual situation and merchandise identified in the ruling request. This position is clearly set forth in section 19 CFR 177.9(b)(1). This sections states that a ruling letter, either directly, by reference, or by implication, is accurate and complete in every material respect.

This ruling is being issued under the provisions of Part 177 and 181 of the Customs Regulations (19 CFR 177 and 181). Should it be subsequently determined that the information furnished is not complete and does not comply with 19 CFR 177.9(b)(1), the ruling will be subject to modification or revocation. In the event there is a change in the facts previously furnished, this may affect the determination of country of origin. Accordingly, if there is any change in the facts submitted to Customs, it is recommended that a new ruling request be submitted in accordance with 19 CFR 177.2.

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This ruling is being issued under the provisions of Part 181 of the Customs Regulations (19 CFR Part 181).

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 212-637-7084.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ W967834
CLA-2 OT:RR:CTF:TCM W967834 ASM
CATEGORY: Classification; Marking
TARIFF NO.: 6211.43.0091

RANDY RUCKER, Esq.
GARDNER CARTON & DOUGLAS LLP
191 N. Wacker Drive, Suite 3700
Chicago, Illinois 60606-1698

RE: Request for reconsideration of NY F84383: Classification and Country of Origin Marking of textile Graduation Caps & Gowns; Modification of NY F84383

DEAR MR. RUCKER:

This is in response to a request for reconsideration dated August 2, 2005, made on behalf of your client, Jostens, Inc. (hereinafter "Jostens"), of Customs and Border Protection (CBP) New York Ruling letter (NY) F84383, dated April 4, 2000, which classified a graduation cap and gown under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). A sample has been submitted to CBP for examination. In addition, we held a meeting with you and a representative of the Jostens' company on September 12, 2006, to discuss the classification of the subject merchandise and have reviewed your supplemental submission dated September 22, 2006

FACTS:

The article identified as the "One Way" BDG graduation cap and gown is composed of woven 100 percent textured polyester fabric. The article identified as the "One Way" Treasure graduation cap and gown is composed of woven 100 percent acetate taffeta fabric. The sample submitted to CBP is a child's "kinder" size cap and gown made of 100 percent acetate fabric. Jostens intends to import the "One Way" caps and gowns, packaged together in sets of one cap and one gown each, from China. Hereinafter, both styles of graduation caps and gowns at issue in this ruling will be referred to as "One Way" Graduation Caps and Gowns.

The graduation caps feature a two fabric crown (skull cap) with fabric that matches the gown on the outside and a white lining fabric sewn to the inside of the cap. The skull cap has a cardboard insert at the top and has been se-

curely glued to the inside fabric lining portion and adhered with glue to the fabric covered 9.5 inch square flat top (mortarboard). The mortarboard features a fabric-covered button and folded fabric pleats on the underside, at each corner, which gives the top of the mortarboard a smooth clean line at each corner. The skullcap portion of the cap has gathered elastic at the back, which has been encased in the folded fabric hem. The gather measures approximately 5 inches in length. This secures the cap to the wearer's head. The skullcap has a folded hem with double overlock stitching at the edge.

The graduation gowns are intended to be full length, descending to the ankle, but the length will vary depending on the height of the wearer. The gowns feature a yolk panel that is lined with matching fabric to form the upper back, neckline, and front shoulder panels. The yolk is joined to a single gathered panel in the back, two separate pleated front panels, and long flowing sleeves that are gathered at each shoulder and descend to the wrist. The entire gown has fully turned and folded seams at the neckline, sleeves, and bottom edges. A color coordinated full front zippered closure has been designed to join the pleated front panels when closed. The pleats mask the seamed edges of the zipper tape with a crisp folded pleat on either side of the zipper. The gown has a v-neck shape at the neckline when the gown is fully closed. The interior seams of the gown have been securely finished with overlock stitching and the yolk has been secured with a second seam.

In NY F84383, dated April 4, 2000, CBP classified the "One Way" Graduation Caps in subheading 6505.90.8090, HTSUSA, which provides for "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not strips), whether or not lined or trimmed . . . : Other: Of man-made fibers: Other: Not in part of braid, Other: Other: Other". The "One Way" Graduation Gowns were classified in subheading 6211.43.0091, HTSUSA, which provides for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers, Other."

In your first submission, you note that your client, Jostens, believes that its "One Way" Graduation Caps and Gowns are properly classified under subheading 9505.90.6000, HTSUSA, as "Festive, carnival or other entertainment articles . . . : Other: Other." Alternatively, Jostens suggests classification of these articles in subheading 6505.90.8090, HTSUSA, as "Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed: Other: Of man-made fibers: Other: Not in part of braid: Other: Other: Other".

ISSUE:

What is the proper classification for the merchandise? Whether the proposed country of origin marking "Assembled in Mexico" satisfied the requirements of 19 USC 1304.

LAW AND ANALYSIS:

Classification

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do

not otherwise require, the remaining GRI may then be applied. The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In your submission, you assert that the "One Way" Graduation Caps and Gowns are academic costumes traditionally worn in conjunction with the celebration of a graduation ceremony. You further assert that these articles are named "One Way" because they are disposable and intended for one time use as distinguished from the Jostens "rental" gowns, which are of a more durable construction and designed for repeated use. Thus, you reason that the subject textile articles should be classified as festive articles in heading 9505, HTSUSA.

Heading 9505, HTSUSA, includes articles, which are "Festive, carnival, or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof". Note 1(e), Chapter 95, HTSUSA, excludes articles of "fancy dress, of textiles, of chapter 61 or 62" from classification in Chapter 95. The ENs to 9505, state, among other things, that the heading covers:

(A) Festive, carnival or other entertainment articles, which in view of their intended use are generally made of non-durable material. They include:

* * *

(3) Articles of fancy dress, e.g., masks, false ears and noses, wigs, false beards and moustaches (not being articles of postiche - heading 67.04), and paper hats. **However, the heading excludes fancy dress of textile materials, of Chapter 61 or 62.** [emphasis supplied]

* * *

In your first submission you begin by asserting that the case of *Midwest of Cannon Falls, Inc. v. United States*, 20 Ct. Int'l Trade 123 (1996), *aff'd in part, rev'd in part*, 122 F.3d 1423 (Fed. Cir. 1997), supports your position that the Jostens' gowns are classifiable as festive articles under Chapter 95, HTSUSA.¹ However, before we can reach a determination as to the festive nature of the subject merchandise, we must first determine whether or not the gowns are articles of "fancy dress" that may be excluded from classification in Chapter 95, HTSUSA, pursuant to Note 1(e), Chapter 95, HTSUSA. Accordingly, we begin by examining the case of *Rubie's Costume Company v. United States*, 337 F.3d 1350 (Fed Cir. 2003), hereinafter *Rubie's*. The *Rubie's* case is directly on point in that it presented the question of whether CBP's decision in HQ 961447, dated July 22, 1998, merited deference when CBP set forth specific characteristics which determined that textile costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel were classifiable as duty free "festive articles" under subheading 9505.90.6000, HTSUSA. In fact, the court found that HQ 961447 was entitled to deference and upheld

¹In your first submission you also cite the case of *Park B. Smith, Ltd. v. United States*, 347 F.3d 922 (Fed. Cir. 2003), which is not applicable to the subject merchandise because we limited the application of the court's decision to the entries at issue in that case.

the reasoning set forth in that ruling, which classified textile costumes of a flimsy nature and construction, lacking in durability, and generally recognized as not being normal articles of apparel, as “festive articles” in heading 9505, HTSUSA. Of particular relevance to the merchandise now in question is the fact that the court specifically noted that HQ 961447 had correctly compared functional and structural deficiencies of “festive article” costumes with the standard features found in “wearing apparel” in order to determine whether articles are properly classified in Chapter 95 or Chapters 61/62, HTSUSA.

The ruling that was upheld in the *Rubie's* case, HQ 961447, affirmed CBP's decision in HQ 959545, dated June 2, 1997, which responded to a domestic interested party petition filed pursuant to Section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516) and Title 19 Code of Federal Regulations Section 175.1 (19 C.F.R. 175.1). In HQ 959545, CBP classified one textile costume, identified as the “Cute and Cuddly Clown” (No. 11594), as a normal article of wearing apparel classifiable in heading 6209, HTSUSA, because it was well-constructed and had a substantial amount of “finishing work”, i.e., sewing used to construct, tailor, or finish the article. The “Cute and Cuddly Clown” garment, which featured a durable neckline with two seams and no raw edges on the article, was classified in the provision for “Babies’ garments and clothing accessories . . .” under subheading 6209.30.3040, HTSUSA. Similarly, the subject “One Way” Graduation Gowns have a substantial amount of finishing work with all interior seams having durable overlock stitching and a second reinforcing seam, a two-ply yolk finished with two seams, and turned hems on the neck, cuffs, and hem. These features make the gowns extremely durable. In addition, the gowns feature a zipper closure and styling features that include formed pleated front panels and a gathered back panel.

HQ 959545 also set forth the criteria used to determine the textile costumes that were classifiable as “festive articles” in subheading 9505.90.6090, HTSUSA, and held that the “Witch of the Webs” (No. 11062), “Abdul Sheik of Arabia” (No. 15020), “Pirate Boy” (No. 12013), and “Witch” (No. 11005), were considered flimsy, lacking in durability, and not normal articles of apparel, and were properly classified as “Festive, carnival or other entertainment articles . . .” in heading 9505, HTSUSA. These textile costumes shared the following characteristics: There were no significant styling features and each costume had raw edges on fabrics that could “run” or fray. Clearly the subject “One Way” Graduation Gowns are distinguishable from these articles in that there is careful styling and construction in the gown which is constructed with formed pleats on the front panels, interior seams with durable overlock stitching and a second reinforcing seam, gathers at the top of the sleeves/back panel, a two-ply yolk, zipper closure, and turned hems on all edges.

The aforementioned features and numerous other characteristics used to distinguish between textile costumes classifiable as “Festive articles” of Chapter 95, HTSUSA, and “fancy dress” of Chapters 61 or 62, HTSUSA, have been set forth in great detail in the CBP Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: Textile Costumes under the HTSUS*, August 2006 (“Textile Costumes under the HTSUS”). As noted in this publication, we generally consider four areas in making classification determinations for textile costumes, i.e., “Styling”, “Construction”, “Finishing Touches”, and “Embellishments”.

With regard to “Styling”, the examples provided in the Informed Compliance Publication note that a “well-made” article of Chapter 61 or 62, HTSUSA, would have two layers of fabric, pleats, and facing fabrics (two or more layers of fabric/linings). The subject gown has abundant “Styling” features with pleats on both front panels, gathers on the back panel/tops of sleeves, and a yolk that has been constructed with two layers of fabric. The Informed Compliance Publication also provides examples of well-made “Construction” elements, which include an assessment of the neckline and seams. Since the subject gown has a full lining on the yolk, this would be considered a well-made neckline. Furthermore, the over-lock stitching and double seams on the yolk are examples of a well-made garment. The publication notes that well-made “Finishing Touches” include zipper closures constructed with a fold of fabric that makes the zipper less visible on the exterior of the costume. The subject garment has a color coordinated full front zipper that has a fabric pleat on either side of the zipper tape making it less visible to the eye. Also representative of a well-made garment is a “turned” hem, i.e., the fabric edge is folded over and sewn to the inside of the garment. The subject garment has turned hems on every edge.

In your second submission dated September 22, 2006, you argue that the gowns do not have “well-made” hems and that the other “well-made” elements (zipper closure, pleats, double panel yolk) have not been incorporated for durability. You further assert that the gowns are “flimsy” overall. However, as set forth above, we have carefully assessed each of these features and found them to be “well-made” and the gowns to be durable overall. This determination has been made in accordance with the aforementioned Informed Compliance Publication. Furthermore, our assessment of each feature is consistent with the criteria used by CBP in determining what is meant by the terms “flimsy, non-durable” or “well-made” in order to classify textile costumes as festive articles in subheading 9505.90.6000, HTSUSA, or as “fancy dress” in Chapters 61 or 62, HTSUSA, and which has been set forth in the following rulings: HQ 957973, August 14, 1995; HQ 958049, August 21, 1995; HQ 958061, dated October 3, 1995; HQ 957948, May 7, 1996; HQ 957952, May 7, 1996; HQ 959545, June 2, 1997; HQ 959064, June 19, 1997; HQ 960805, August 22, 1997; HQ 960107, October 10, 1997; HQ 961447, July 22, 1998; HQ 962081, November 25, 1998; HQ 962184, November 25, 1998; and HQ 962441, March 26, 1999.

Although you assert that the court’s opinion in *Rubie’s* did not limit the holding to Halloween or party costumes, we note that the language of heading 9505, HTSUSA, only provides for “Festive, carnival or other entertainment articles”. Clearly, a graduation gown is not a festive, carnival, or entertainment article. Rather, the graduation gown represents a solemn academic tradition dating back to medieval times. Hoods seem to have served to cover the head until superseded by the skullcap.² While we recognize that academic graduations are often viewed in conjunction with a festive celebration, the actual graduation ceremony itself, with each scholar garbed in a traditional cap and gown, is an important, solemn, and dignified occasion. Few graduates wear the cap and gown to post-graduation parties and/or festivities, as it is most certainly not intended for such a purpose. In short, the

²This information was obtained from the American Council on Education website. See “www.acenet.edu”.

graduation gown is a normal article of apparel for academic exercises that honor and distinguish the scholar/graduate on that ceremonial occasion.

In your submission, you contend that the stitching used in the subject gowns does not create “well-made” seams in accordance with CBP’s standard for “fancy dress” classifiable in Chapter 61 or 62, HTSUSA, that was affirmed in *Rubie’s* and later set forth in detail in the CBP Informed Compliance Publication (ICP) *What Every Member of the Trade Community Should Know About: Textile Costumes under the HTSUS*, August 2006 (“Textile Costumes under the HTSUS”). We disagree.

The aforementioned ICP notes that a “flimsy” costume typically has loose stitching at the seams. It is our position that the costume design, type of fabric used, type of stitch, and length/tension used in a series of stitches, must all be considered in combination when making a determination as to whether the article is “well-made” or “flimsy”. In this instance, we note that the quality of the stitching and seam construction is not loose or gaping. Furthermore, the subject gowns are not designed to fit close to the body. Given the fact that the gown has been designed as a loose and flowing garment, there are fewer pressure points and less stress exerted along the seams of this garment. As a result, the seams are of sufficient strength and quality to allow for repetitive use of the gown.

You have cited numerous rulings in your second submission, wherein CBP classified certain textile costumes as “festive articles” of Chapter 95, HTSUSA. You assert that these same costumes were tested by you and found to have greater seam strength than the gowns now at issue.³ CBP has not authenticated the samples used or assessed the validity of your test results. As we have already noted, seam quality may be affected by the type of fabric used, design of the garment, as well as the thread, stitching, and stitch tension. An article of wearing apparel constructed of delicate fabric may compare less favorably in terms of seam strength than the Jostens’ gowns if subjected to the same battery of tests cited in your submission. Yet, such delicate fabrics are routinely used to construct articles of wearing apparel. Finally, the quality of a seam is not the only criteria by which we assess the construction and durability of a textile costume. Thus, in classifying textile costumes we consider the article as a whole and carefully assess such features as styling, construction, finishing touches, and embellishments. See “Appendix”, CBP Informed Compliance Publication, *What Every Member of the Trade Community Should Know About: Textile Costumes under the HTSUS*, August 2006 (“Textile Costumes under the HTSUS”).

In view of the foregoing, we conclude that the “One Way” Graduation Gowns are “well-made” garments and not “flimsy” costumes of Chapter 95, HTSUSA. Although the subject graduation gowns may only be used by the wearer one time, they are durable, well-made, and intended to be worn as a normal traditional article of apparel that is appropriately used for academic

³ We have reviewed the CBP New York Ruling Letters set forth at **Exhibit B** of your second written submission dated September 22, 2006, wherein CBP cites to certain “well-made” features of the costumes in each of the rulings while still classifying the costumes as “festive articles” in Chapter 95, HTSUSA. A finding that the garment contains certain well-made feature(s) does not preclude the textile costume from being classified in Chapter 95, HTSUSA, where there is a determination that the overall assessment of the article is flimsy and non-durable.

commencement exercises and not for festive, carnival, or other entertainment purposes.

In both of your submissions, you assert that the "One Way" graduation gown is disposable. However, disposability does not preclude classification of the gowns as garments of Chapter 62, HTSUSA. In the following rulings, CBP has consistently found disposable and one-time-wear garments to be normal types of wearing apparel: HQ 964179, dated August 10, 2000; HQ 958389, dated September 7, 1995; HQ 957117, dated August 1, 1995; NY L82210, dated February 16, 2005; and NY I80731, dated May 13, 2002.

The CBP rulings cited on pages 6-7 of your submission, wherein you assert that goods for birthday, wedding and graduation parties have been classified in heading 9505, HTSUSA, are not applicable to the articles now in question. First, we note that the cake decorations and other general party decorations/goods that were classified in these rulings may be properly classified within subheading 9505.90.4000, HTSUSA, because the provision specifically provides for "... Confetti, paper spirals or streamers, party favors and noise makers; parts and accessories thereof." Secondly, unlike the subject "One Way" Graduation Gowns, the decorative entertainment articles set forth in the CBP rulings cited in your submission, are not textile articles of wearing apparel.

Inasmuch as the "One Way" Graduation Caps and Gowns are retail packaged as a set for importation, we note that these goods cannot be classified in accordance with GRI 1. These articles are *prima facie*, classifiable in two different headings. The "One Way" Graduation Gowns are classifiable in heading 6211, HTSUSA, which provides, in part, for "... other garments". The "One Way" Graduation Caps are classifiable in heading 6505, HTSUSA, which provides, in part for "Hats or other headgear". In your second submission, you suggest that the "One Way" Graduation Caps are separately classifiable in heading 9505, HTSUSA, because they are of flimsy and non-durable construction.

When goods are, *prima facie*, classifiable in two or more headings, they must be classified in accordance with GRI 3:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

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

* * *

GRI 3 establishes a hierarchy of methods of classifying goods that fall under two or more headings. GRI 3(a) states that the heading providing the most specific description is to be preferred to a heading which provides a more general description. However, GRI 3(a) indicates that when two or more headings each refer to part only of the materials or substances in a composite good or to part only of the items in a set put up for retail sale,

those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description than the other. In this case, the headings, 6211 and 6505, HTSUSA, each refer to only part of the items in the set. Thus, pursuant to GRI 3(a), we must consider the headings equally specific in relation to the goods. Accordingly, the goods are classifiable pursuant to GRI 3(b).

In classifying the articles pursuant to a GRI 3(b) analysis, the goods are classified as if they consisted of the component that gives them their essential character and a determination must be made as to whether or not these are goods put up in "sets for retail sale". In relevant part, the ENs to GRI 3(b) state:

(VII) In all these cases the goods are to be classified as if they consisted of the material or component **which gives them their essential character**, insofar as this criterion is applicable.

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

* * *

(X) For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:

- (a) consist of at least two different articles which are, *prima facie*, classifiable in different headings. Therefore, for example, six fondue forks cannot be regarded as a set within the meaning of this Rule;
- (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 accordance with GRI 3(b), we find that the subject component articles are properly classified as "sets" because they consist of goods put up in a set for retail sale. The gown and coordinating hat are put up together to meet a particular need or carry out a specific activity, *i.e.*, designation as an academic scholar for graduation commencement exercises. Furthermore, the components in this set are, *prima facie*, classifiable in different headings and have been put up in retail packaging suitable for sale directly to users without repacking.

There have been several court decisions on "essential character" for purposes of GRI 3(b). These cases have looked to the role of the constituent materials or components in relation to the use of the goods to determine essential character. *See, Better Home Plastics Corp. v. United States*, 916 F. Supp. 1265 (CIT 1996), *affirmed*, 119 F. 3d 969 (Fed. Cir. 1997); *Mita Copystar America, Inc. v. United States*, 966 F. Supp. 1245 (CIT 1997), *rehearing denied*, 994 F. Supp. 393 (CIT 1998), and *Vista International Packaging Co., v. United States*, 19 CIT 868, 890 F. Supp. 1095 (1995). *See also, Pillowtex Corp. v. United States*, 983 F. Supp. 188 (CIT 1997), *affirmed*, 171 F. 3d 1370 (Fed. Cir. 1999).

The essential character of these articles can be determined by comparing each component as it relates to the use of the product. In this instance, it is the gown that imparts the essential character to the set because the distinctive design renders it immediately recognizable as a formal gown that is commonly used for graduation exercises, i.e., the long flowing sleeves, a two-pleat yolk panel design with carefully pleated front panels that attach just below the shoulders, voluminous material to create a full drape to the gown and a full length that typically descends to the ankles. Furthermore, the gown is more carefully constructed with fully turned and sewn hems, double reinforced interior seams, pleats, gathers, and a zipper closure. By comparison, the mortarboard is constructed with a cardboard insert, which has been glued to the skullcap portion, and the cardboard is covered with fabric that has been folded/glued to secure it in place.⁴ Clearly, the gown was more costly to manufacture due to the voluminous material used to construct the garment and added finishing features, i.e., turned hems, gathered and pleated panels, double reinforced interior seams, and a full length zipper closure.

We disagree with your assertion that the mortarboard provides the essential character to the set due to the use and symbolism of a tassel which may be attached to the mortarboard and your contention that the cap is the focal point of the academic costume. As we have previously noted in this ruling, based on our research, it is the gown which has been identified as the distinctive garb of academic scholars. It is the graduation gown that is more closely aligned with the original clerical robes donned by scholars during medieval times. In reality, the vast majority of high schools and universities garb their graduates in cap *and* gown even though the cap alone would be far less expensive to purchase. In fact, the photograph submitted in **Exhibit F** of your second submission, which was reproduced from the *U.S. News and World Report Cover* (America's Best Colleges, August 28, 2006), shows graduates in both cap and gown. We further note that the second visual representation contained at **Exhibit F**, taken from a *Wall Street Journal* article (September 12, 2006) is merely an artist's fictional representation of a disembodied neck, head and mortarboard being carried on a conveyor belt with no depiction of the part of the body that would have been garbed in the graduation gown.

Furthermore, CBP has generally held that the garment and not the headgear imparts the essential character to a GRI 3(b) set. See HQ 959545, dated June 2, 1997, in which it was noted that by application of GRI 3(b), the "Cute and Cuddly Clown" hat that was retail packaged with the costume was also classifiable under Chapter 62, HTSUSA, because the essential character of the set was determined by the garment. See also NY B83708,

⁴With regard to your assertion that the graduation caps, if imported separately, would be classified in heading 9505, HTSUSA, due to a flimsy and non-durable construction, Chapter 65, Note 1(c), HTSUSA, only precludes "Dolls' hats, other toy hats or carnival articles of chapter 95". The subject graduation caps are used to represent an important and solemn academic occasion. As such, we do not consider the mortarboard caps to be a "carnival" article or otherwise precluded from classification as "headgear" in heading 6505, HTSUSA. In addition, the EN's to 6507, specifically provide for hat foundations consisting of "paperboard", "papier mache", and "cork". Presumably, hats constructed of these light-weight foundations would provide greater comfort for the wearer but may also necessitate that the covering materials be glued rather than sewn to such a foundation.

dated April 14, 1997, which found that the gown imparted the essential character to a graduation cap, gown, tassel, hood, and stole set pursuant to a GRI 3(b) analysis.

In view of the foregoing, we find that the "One Way" Graduation Caps and Gowns are properly classified as retail sets pursuant to GRI 3(b) and that the gown imparts the essential character to the set. Thus, we find that NY F84383, dated April 4, 2000, correctly classified the subject graduation gowns as garments of subheading 6211.43.0091, HTSUSA.

Country of Origin Marking

NY F84383, held that the words "Assembled in Mexico" would not be an acceptable country of origin marking for the imported cap and gown. Although NY F84383 correctly determined that the graduation cap and gown are "wholly assembled" in a single country, Mexico, the ruling further noted that the U.S. origin fabrics used to make the graduation cap and gown were cut to shape in Mexico. As such, it was held that the cap and gown could not be marked "Assembled in Mexico" because the U.S. fabric had not been exported in a condition ready for assembly without further fabrication.

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States the English name of the country of origin of the article. By enacting 19 U.S.C. 1304, Congress intended to ensure that the ultimate purchaser would be able to know by inspecting the marking on the imported goods the country of which the goods are the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will. See *United States v. Friedlaender & Co.*, 27 C.C.P.A. 297, 302 C.A.D. 104 (1940).

The subject merchandise is a product of Mexico under 19 CFR Part 102. As such, with regard to the proposed marking statement, "Assembled in Mexico", Section 134.43(e), CBP Regulations (19 CFR 134.43(e)), provides, in pertinent part that:

Where an article is produced as a result of an assembly operation and the country of origin of such article is determined under this chapter to be the country in which the article was finally assembled, such article may be marked, as appropriate, in a manner such as the following:

- (1) Assembled in (country of final assembly);
- (2) Assembled in (country of final assembly) from components of (name of country or countries of origin of all components); or
- (3) Made in, or product of, (country of final assembly).

Since the subject merchandise was the result of an assembly operation and was finally assembled in Mexico within the meaning of 19 CFR 134.43(e), we now find that the finished merchandise may be marked "Made in Mexico" or "Assembled in Mexico". This determination is consistent with the following rulings, which found that apparel cut and assembled overseas can be properly marked "Assembled in": HQ 562205, dated March 26, 2002; HQ 560933, dated June 26, 1998; and HQ 560095, dated January 27, 1997.

In view of the foregoing, we have reconsidered NY F84383 and determined that the ruling erroneously held that the subject merchandise could not be marked "Assembled in Mexico".

HOLDING:

The subject merchandise, identified as the Josten's "One Way" BDG graduation cap and gown and the "One Way" Treasure graduation cap and gown, is correctly classified in subheading 6211.43.0091, HTSUSA, which provides for, "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls': Of man-made fibers, Other." The general column one rate of duty is 16 percent *ad valorem*. The textile category is 659.

The subject merchandise has been manufactured in Mexico as a result of assembly operations and determined to be a product of Mexico under 19 CFR Part 102, and may be marked "Assembled in Mexico." A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is entered. If the documents have been filed without a copy, this ruling should be brought to the attention of the CBP Officer.

EFFECT ON OTHER RULINGS:

NY F84383, dated April 4, 2000, is hereby modified, only with respect to the determination regarding the country of origin marking "Assembled in Mexico".

Quota/visa requirements are no longer applicable for merchandise, which is the product of World Trade Organization (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 and related issues, we refer you to the web site at the Office of Textiles and Apparel of the Department of Commerce at otexa.ita.doc.gov.

Please note that the duty rates set forth in this ruling letter are merely 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.

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
CLASSIFICATION OF CERTAIN PVC-COATED GLASS
BOTTLES**

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

ACTION: Notice of proposed revocation of one ruling letter and re-

vocation of treatment relating to the classification of certain polyvinylchloride (PVC) - coated glass bottles.

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 certain PVC-coated glass bottles. 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 June 8, 2007.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, 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, Trade and Commercial Regulations Branch, at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Heather K. Pinnock, Tariff Classification and Marking Branch, at (202) 572-8828.

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 certain PVC-coated glass bottles. Although in this notice CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 968112, dated June 8, 2006 (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 HQ 968112, CBP classified certain PVC-coated glass bottles in subheading 7017.90.5000, HTSUSA, which provides for: "Laboratory, hygienic or pharmaceutical glassware, whether or not graduated or calibrated: Other: Other." Based on our recent review of HQ 968112 and additional information submitted by the importer, which included a sample of the merchandise at issue, we have determined that the classification set forth for the PVC-coated glass bottles in HQ 968112 is incorrect. It is now CBP's position that the subject glass bottles are properly classified in subheading 7010.90.0540, HTSUSA, which provides for, among other things: "Carboys, bottles . . . and other containers, of glass, of a kind used for the conveyance or packing of goods; . . . : Other: Serum bottles, vials and other pharmaceutical containers: Of a capacity not exceeding 0.15 liters."

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to revoke HQ 968112 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) H005541 (At-

tachment 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: April 18, 2007

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,
HQ 968112
June 8, 2006
CLA-2 RR:CTF:TCM 968112 CAM
CATEGORY: Classification
TARIFF NO.: 7017.90.5000

PORT DIRECTOR U.S. CUSTOMS AND BORDER PROTECTION
1 La Puntilla St.
U.S. Customhouse
San Juan, PR 00901

RE: Protest 4909-05-100021; 250 ml. Amber Glass Bottles with 3-Neck Finish

DEAR PORT DIRECTOR:

The following is our decision regarding Protest 4909-95-100021, which concerns the classification of 250 ml. amber glass bottles with a 3-neck finish under the Harmonized Tariff Schedule of the United States (HTSUS).

FACTS:

The subject merchandise consists of 250 ml. amber glass bottles with a 3-neck finish. The merchandise was entered on September 20, 2004 under subheading 7010.90.0540, HTSUS, which provides for, in pertinent part, bottles, vials, and other containers of glass, of a kind used for the conveyance or packaging of goods: other: serum bottles, vials, and other pharmaceutical containers of a capacity not exceeding 0.15 liters.

The entry was liquidated on February 4, 2005 under subheading 7017.90.5000, HTSUS, as laboratory, hygienic, or pharmaceutical glassware whether or not graduated or calibrated; other; other. The protest was timely filed on April 26, 2005.

On protest, the importer asks Customs and Border Protection (CBP) to consider subheading 7010.90.0530, HTSUS, which provides for, in relevant part, bottles, vials, and other containers of glass, of a kind used for the conveyance or packaging of goods: other: serum bottles, vials, and other pharmaceutical containers of a capacity exceeding 0.15 liter but not exceeding 0.33 liters.

ISSUE:

Whether certain 250 ml. amber glass bottles with a 3-neck finish are classifiable as glass bottles used for the "conveyance or packaging of goods," or as "laboratory, hygienic, or pharmaceutical glassware," under the HTSUS?

LAW AND ANALYSIS:

Classification of merchandise under the HTSUS is in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides 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, and if the headings and legal notes do not require otherwise, then CBP may apply the remaining GRIs.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the HTSUS. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and, generally, are indicative of the proper interpretation of these headings. See T.D. 89-80, 54 FR 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

7010 Carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packaging of goods; preserving jars of glass; stoppers, lids and other closures, of glass:

* * *

Other:

Serum bottles, vials and other pharmaceutical containers

* * *

7010.90.0530 Of a capacity exceeding 0.15 liter but not exceeding 0.33 liter

7017 Laboratory, hygienic or pharmaceutical glassware, whether or not graduated or calibrated:

* * *

7017.90 Other

* * *

7017.90.5000 Other

The importer argues that the merchandise should be classified under heading 7010, HTSUS, because the intended use for the bottles are to "pack and convey" drugs. In support of this contention, the importer provided a letter from Baxter Healthcare Corp. (Baxter) stating that it used the merchandise in its "Fill & Pack process" for the anesthesia it manufactures. The importer also cites to NY F84840, dated April 19, 2000, asserting without explanation that the merchandise classified in that ruling under subheading 7010.94.0500, HTSUS, was "a product with similar use." Merchandise within the terms of heading of 7010, HTSUS, is classified by the merchandise's principal use. When merchandise is classifiable according to its princi-

pal use, then Additional United States Rule of Interpretation 1(a), HTSUS, applies, which states:

(a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind which the imported goods belong, and the controlling use is the principal use. Typically, the following factors are indicative, but not conclusive, of a good's principal use: (1) the general physical characteristics; (2) the expectations of ultimate purchaser; (3) the channels of trade; (4) the environment of the sale; (5) whether the use is in the same manner as that which defines the class of article; (6) the economic practicality of using the article; and (7) the recognition in the trade of this use. See *Kraft, Inc. v. United States*, 16 CIT 483 (1992); *G Heileman Brewing Co. v. United States*, 14 CIT 614 (1990); *United States v. Carborundum Company*, 63 CCPA 98, C.A.D. 1172, 536 F.2d 373 (1976), cert denied, 428 U.S. 979 (1976).

Treasury Decision (T.D.) 96-7 provides additional criteria that are indicative, but also not conclusive, of the classification for containers of glass of a kind used for the conveyance or packaging of goods. The criteria from T.D. 96-7 considers whether: 1. [The container] [g]enerally [has] a large opening, a short neck (if any) and as a rule, a lip or flange to hold the lid or cap, [is] made of ordinary glass (colourless or coloured) and [is] manufactured by machines which automatically feed molten glass into moulds where the finished articles are formed by the action of compressed air; 2. The ultimate purchaser's primary expectation is to discard/recycle the container after the conveyed or packed goods are used; 3. [The container is] [s]old from the importer to a wholesaler/distributor who then packs the container with goods; 4. [The container is] [s]old in an environment of sale that features the goods packed in the container and not the jar itself; 5. [The container is] [u]sed to commercially convey foodstuffs, beverages, oils, meat extracts, etc.; 6. [The container is] [c]apable of being used in the hot packing process; and 7. [The container is] [r]ecognized in the trade as used primarily to pack and convey goods to a consumer who then discards the container after this initial use.

The ENs for heading 7010, HTSUS, state that the heading covers "glass containers of the kind commonly used commercially for the conveyance or packing." The key term in the ENs is "commercial conveyance," but that term is not defined. A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. *Nippon Kogaku (USA) Inc. v. United States*, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities, and other reliable sources. *C.J. Tower & Sons v. United States*, 69 CCPA 128, 673 F.2d 1268 (1982).

The root word of "commercially" is "commerce," and that is described as the exchange or buying and selling of commodities. The *Random House Dictionary of the English Language* (1973), p. 295, and *Webster's New World Dictionary* (3rd Coll. Ed.) (1988), p. 280. The root word of "conveyance" is "convey," which is described as to carry, bring or take from one place to another; transport; bear. *Id.* at p. 320 and p. 305, respectively. In this case, the information before CBP does not support classification under heading 7010, HTSUS. The information provided by the importer in the protest does not provide a sufficient basis to determine the principal use of the merchandise.

The importer relies on the letter from Baxter and the ruling from NY F84840 to suggest classification under subheading 7010.90.0530, HTSUS, but neither establishes the principal use of the subject merchandise.

Specifically, the letter from Baxter does not establish the principal use for three reasons. First, the letter is only indicative of the actual use by Baxter - not the principal use of the glass bottles. In particular, the letter by Baxter does not establish that the use cited is the primary use of the class or kind of glass bottles in the United States at the time of importation. Second, the letter only demonstrates that the glass bottles are used in the "Fill & Pack process." The letter, however, does not state that the merchandise is then carried from one place to another to be bought or sold in a "commercial conveyance." Third, the letter does not address the majority of the aforementioned criteria for determining principal use from the various Court of International Trade decisions or T.D. 96-7. Among the relevant factors that cannot be gleaned from Baxter's letter include, but are not limited to, whether the ultimate purchaser would discard or recycle the bottle, the environment of the sale, the channels of trade, and whether the container is used commercially.

In addition, the importer's application of ruling NY F84840 to the glass bottles is unpersuasive. Initially we note, that the importer provides no explanation of how the facts in this situation are similar to that ruling. In NY F84840, the size and the shape of the bottles were different from the bottles in this protest. Further, the description of the use of the bottles in the letter provided by Baxter is distinguishable from the use described in NY F84840. Baxter stated that the bottles were used in the "Fill & Pack process," whereas the bottles in NY F84840 were used to "pack and convey" drugs. In other words, the bottles in NY F84840, were definitely used to convey the product but, here, Baxter's letter does not indicate that any actual conveyance occurs. As a result, the ruling from NY F84840 is not applicable to the subject merchandise of this protest.

The importer has failed to allege sufficient facts to demonstrate that the principal use of the glass bottles is of a kind used for the conveyance or packaging of goods. The available information, however, does support classification under heading 7017, HTSUS, because the subject merchandise meets the terms of that heading. In fact, the subject merchandise is provided for *eo nomine* in heading 7017, HTSUS, which includes pharmaceutical glassware. The subject merchandise is pharmaceutical glassware because it is a glass bottle that a pharmaceutical company uses in the manufacture of anesthesia.

HOLDING:

For the foregoing reasons, the 250 ml. amber glass bottles with a 3-neck finish are classifiable under heading 7017, HTSUS, and, specifically under subheading 7017.90.5000, HTSUS, which provides for: laboratory, hygienic, or pharmaceutical glassware whether or not graduated or calibrated; other; other.

This protest should be denied. In accordance with the Protest/Petition Processing Handbook (CIS HB, January 2002, pp. 18 and 21), you are to mail this decision, together with the Customs Form 19, to the protestant no later than 60 days from the date of this letter. Any reliquidation of the entry in accordance with the decision must be accomplished prior to mailing of the decision.

Sixty days from the date of the decision the Office of Regulations and Rulings will make the decision available to CBP personnel, and to the public on the CBP Home Page on the World Wide Web at www.cbp.gov, by means of the Freedom of Information Act, and other methods of public distribution.

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

[ATTACHMENT B]

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

HQ H005541
CLA-2 OT:RR:CTF:TCM H005541 HkP
CATEGORY: Classification
TARIFF NO.: 7010.90.0540

LEONARD M. SHAMBON, Esq.
3619 Legation Street, NW
Washington, D.C. 20015

RE: Revocation of HQ 968112; PVC-coated glass bottles

DEAR MR. SHAMBON:

This is in response to your request for reconsideration of Headquarters Ruling Letter ("HQ") 968112, issued on June 8, 2006, concerning the classification of certain merchandise under the Harmonized Tariff Schedule of the United States ("HTSUS"). At issue is the correct classification of PVC (polyvinylchloride) - coated bottles made of "Type III" (also, "Type 3") glass imported by your client Saint-Gobain Desjonquieres ("SGD"). U.S. Customs and Border Protection ("CBP") classified this merchandise under heading 7017, HTSUS, as laboratory, hygienic or pharmaceutical glassware. It is your contention that the bottles are properly classified in heading 7010, HTSUS, as glass bottles of a kind used for the conveyance or packing of goods. For the reasons set forth in this ruling, we hereby revoke HQ 968112.

FACTS:

The merchandise at issue is 250 ml bottles made of transparent amber colored Type III glass, also known as Soda Lime glass. In HQ 968112, CBP incorrectly described this product as having a "3-neck finish" because this was the description provided in section 7 of the Application for Further Review (AFR) of the Protest submitted to CBP. Further, no sample of the product was provided to CBP. You have now told us that the correct product description is: "Amber glass type 3, Neck finish AER32", and have provided a sample of the bottle for our inspection. We are now aware that the bottle actually has one neck, which you say is specifically designed to allow the bottle to be sealed with a non-removable crimp top consisting of an aluminum seal with a spray head device of plastic parts. The spray head device is subsequently used in a specially designed vaporizer to administer anesthetic. However, the top is not under consideration here.

Generally, Type III/Soda Lime glass is used to manufacture bottles, jars, everyday drinking glasses and window glass, among other things (www.lenntech.com/Glass.htm). In addition, Soda Lime glass is one of the

glass types approved by the United States Pharmacopeia - National Formulary (USP-NF) for use in pharmaceutical packaging.

In our previous ruling on this merchandise, CBP found that you failed to allege sufficient facts to demonstrate that the principal use of the class of glass bottles to which the subject merchandise belongs is for the conveyance or packing of goods. In addition, CBP found that the bottle was provided for, *eo nomine*, in heading 7017, HTSUS, because "it is a glass bottle that a pharmaceutical company uses in the manufacture of anesthesia." You have now provided CBP with additional information about your merchandise. We have considered your arguments and, based on the new information provided to CBP, we now conclude that the previous classification of your merchandise under heading 7017, HTSUS, was incorrect. Our reasoning is set forth in the "Law and Analysis" section below.

ISSUE:

What is the correct classification of the PVC-coated glass bottles?

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 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

7010 Carboys, bottles, flasks, jars, pots, vials, ampoules and other containers, of glass, of a kind used for the conveyance or packing of goods; preserving jars of glass; stoppers, lids and other closures, of glass:

* * *

7010.90 Other:

7010.90.05 Serum bottles, vials and other pharmaceutical containers

* * *

7010.90.0540 Of a capacity not exceeding 0.15 liters . . .

7017 Laboratory, hygienic or pharmaceutical glassware, whether or not graduated or calibrated:

* * *

7017.90 Other:

* * *

7017.90.5000 Other.

As an initial matter, we note that the PVC-coated glass bottles are composite goods, consisting as they do, of the different materials of glass and plastic. Therefore, they cannot be classified according to GRI 1. GRI 3(b) directs that composite goods consisting of different materials shall be classified as if they consisted of the material or component which gives them their

essential character. After examining the merchandise, we conclude that its essential character is the glass bottle because it gives the merchandise its shape, weighs more than the PVC component, and by its color protects the product it contains from ultraviolet ("UV") light. The PVC coating is merely a safety coating that reduces slippage and breakage of the bottle.

CBP previously classified the bottles at issue in heading 7017, HTSUS, as pharmaceutical glassware because they are glass bottles used by a pharmaceutical company. However, based on the sample and additional information provided to CBP and after consulting the ENs to heading 7017, HTSUS, we are now of the view that the bottles are not described in heading 7017, HTSUS.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80. EN 70.17 explains:

This heading cover **glass articles of a kind in general use in laboratories** (research, pharmaceutical, industrial, etc.) including special bottles (gas washing, reagent, Woulf's, etc.), . . .

* * *

The expression "hygienic or pharmaceutical glassware" refers to articles of general use **not** requiring the services of a practitioner. The heading therefore covers, *inter alia*, irrigators, nozzles (for syringes, enemas, etc.), urinals, bed pans, chamber pots, spittoons, cupping-glasses, breast relievers . . . eye-baths, inhalers and tongue depressors. . . .

Articles of this heading may be graduated or calibrated. They may be made of ordinary glass (particularly for pharmaceutical or hygienic purposes), but laboratory glassware is frequently of borosilicate glass, fused quartz or other fused silica because of the greater chemical stability and low coefficient of expansion of such glass.

The heading excludes:

(a) Containers for the conveyance or packing of goods (heading 70.10)[.]

* * *

Generally, a "pharmaceutical" is a drug or medicine that is prepared or dispensed in pharmacies and used in medical treatment. In that sense, any bottle that holds a pharmaceutical may generally be considered "pharmaceutical glassware". However, when we compare the examples of hygienic or pharmaceutical glassware provided in the ENs with the sample of your merchandise, we find that they are dissimilar. EN 70.17 describes items used for pharmaceutical or medical purposes; your merchandise holds goods to be used for medical purposes. For this reason, we conclude that your merchandise is outside the scope of heading 7017, HTSUS.

It is your view that the correct classification of this merchandise is under heading 7010, HTSUS, as bottles of glass of a kind used for the conveyance or packing of goods. In HQ 968112, CBP applied specific identifiable charac-

teristics⁵ set forth in Treasury Decision (T.D.) 96-7 (November 29, 1995), 30 Cust. B. & Dec. No. 30, which CBP found to be indicative, though not conclusive, of the class of containers of glass of a kind used for the conveyance or packing of goods. However, in applying T.D. 96-7, we failed to take into account the U.S. Customs Service's (now, CBP) response to a comment submitted by industry that the first criterion enumerated, physical characteristics of the class, was too narrow for the entire class because the entire class included four different types of containers: (A) Carboys, demijohns, bottles, and similar containers of all sizes and shapes; (B) Jars, pots and similar containers; (C) Ampoules; and (D) Tubular containers and similar containers. Based on the expressed concerns, Customs agreed that physical description together with descriptions found in the ENs are indicative but not conclusive of glass articles belonging to the class "containers of a kind used for the conveyance or packing of goods".

EN 70.10 explains, in relevant part, that heading 7010, HTSUS:

[C]overs all glass containers of the kinds commonly used commercially for the conveyance or packing of liquids or of solid products (powders, granules, etc.). They include:

(A) Carboys, demijohns, bottles (including syphon vases), phials and similar containers, of all shapes and sizes, used as containers for chemical products (acids, etc.), beverages, oils, meat extracts, perfumery preparations, pharmaceutical products, inks, glues, etc.

These articles, formerly produced by blowing, are now almost invariably manufactured by machines which automatically feed molten glass into moulds where the finished articles are formed by the action of compressed air. They are usually made of ordinary glass (colourless or coloured) although some bottles (e.g., for perfumes) may be made of lead crystal, and certain large carboys are made of fused quartz or other fused silica.

The above-mentioned containers are generally designed for some type of closure; these may take the form of ordinary stoppers . . . or special devices . . .

These containers remain in this heading . . . , **provided** that they are not of a kind used as laboratory glassware.

* * *

⁵These characteristics would include containers of all shapes and sizes:

1. generally having a large opening, a short neck (if any) and as a rule, a lip or flange to hold the lid or cap, made of ordinary glass (colorless or colored) and manufactured by machines which automatically feed molten glass into molds where the finished articles are formed by the action of compressed air;
2. in which the ultimate purchaser's primary expectation is to discard the container after the conveyed or packed goods are used;
3. sold from the importer to a wholesaler/distributor who then packs them with goods;
4. sold in an environment of sale that features the goods packed in the jar and not the jar itself;
5. used to commercially convey foodstuffs, beverages, oils, meat extracts, etc.;
6. capable of being used in the hot packing process; and
7. recognized in the trade as used primarily to pack and convey goods to a consumer who then discards the container after this initial use.

The heading does not include:

* * *

(e) Laboratory, hygienic or pharmaceutical glassware (heading 70.17).

As we have previously stated, USP Type III Soda Lime glass is one of the glass types approved by the USP-NF for use in pharmaceutical packaging. Our research on the Internet indicates that the use of yellow amber glass of the types required by pharmaceutical standards is recommended for preparations sensitive to ultraviolet rays. Pharmaceutical standards prescribe that the transmission of light must be below 10 % of the incident radiation of each wavelength between 290/450 m μ (See, for e.g., http://www.bormioliroccopackaging.com/pharmaceutical/technical_know_how/glass/index.htm). Although, you have not provided specific information on whether your bottles are below the 10% ceiling prescribed by pharmaceutical standards, you have informed us that your client sells 100 percent of its imports of this type of PVC coated bottle to a pharmaceutical manufacturer. That manufacturer fills the bottles with anesthetic - a volatile product with a higher pressure than the atmosphere. Each bottle is sealed with a non-removable crimp top spray head device. The bottles are delivered to the manufacturer's customers - hospitals, clinics or doctor's or dentist's offices where surgery may take place. Based on this information, we proceed on the assumption that your bottles meet the standard. This information also indicates that your bottles are designed for closure by a special device, as mentioned in the ENs. Finally, you have provided information which indicates that plastic coated glass bottles are generally regarded by the pharmaceutical and chemical industry as being useful for the transportation of chemical and pharmaceutical products because the coating reduces slippage and breakage, thereby protecting personnel from exposure to dangerous materials. We find, therefore, that your bottles are "of a kind" used for the packing or conveyance of chemical or pharmaceutical products, as explained by the EN 70.10(A) and are classified in heading 7010, HTSUS.

HOLDING:

By application of GRI 1, the PVC-coated bottles at issue are classified in heading 7010, HTSUS, and are specifically provided for in subheading 7010.90.0540, HTSUSA, which provides for: "Carboys, bottles . . . and other containers, of glass, of a kind used for the conveyance or packing of goods; . . . Other: Serum bottles, vials and other pharmaceutical containers: Of a capacity not exceeding 0.15 liter."

EFFECT ON OTHER RULINGS:

HQ 968112, dated June 8, 2006, is hereby revoked.

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