

TALKING TRADE

Class. & Trade Pro.

Customs Update

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& Williams

Cat antlers and 'neckties in bottles': Customs has a bagful of stories to tell

Americans have diverse and sometimes offbeat tastes — a fact often reflected in the goods they import, like, for instance, cat antlers.

And when strange goods enter the country, it falls to the Customs Service to appraise, classify and process them, just like any other imported products. The results often make for interesting reading. We offer below a few examples with a minimum . . . oh well, a modicum . . . of editorial comment.

Did we say *cat antlers* back there? Well, yes, we did. What, you might ask, are cat antlers?

Well — and we are not making this up — it seems that, at Christmastime, some Americans like to dress up their pet cats with little simulated reindeer antlers made of polyester-covered foam rubber.

A few years ago, when a legal issue arose regarding a shipment of cat antlers, your writers smiled at the fact that such a product even existed. When we learned that the issue involved shipment of four 40-foot shipping containers crammed with cat antlers — with four more containers on the way — we perhaps smiled a bit less. That's a lot of cat antlers.

Not being cat owners, we would not presume to offer any comment regarding the use of cat antlers. But we note, with a great sigh of relief, that they are affixed to the cat by means of a simple elastic string, with no staples or adhesives involved. (No animals were injured during the writing of this column.)

Beyond cat antlers, published Customs rulings indicate that Americans import a lot of strange things. Customs does its best to deal with them.

For example, take the old "necktie in a bottle" craze that apparently swept the country while we were blinking a few years ago. Importers tried to enter these products as novelty articles, but didn't count on the vigilance of the Customs Service.

When is a necktie not a necktie?

Customs ruled that "the necktie . . . may be removed from the bottle at any time and worn as a necktie" and must therefore be classified as a necktie, subject to textile

quotas. What's more, since the glass container is not the "usual" packing material for a necktie (no kidding), Customs held that it must be separately classified upon entry (New York Customs Ruling A80618, March 18, 1996).

That's not the only insidious plot to foil the necktie quota. Consider the case of the "Old Fart Tie," a woven polyester cravat festooned with the words "Old Fart" in ¼-inch lettering. This was no mere tie, as Customs duly noted, it contained a "plastic bladder . . . in the tie's lower interior portion, connected to a rubber tongue. When the plastic bladder is squeezed, air rushing through the rubber tongue produces a raspberry-like sound."

Customs conceded that the tie is "not a normal article of apparel" (good) and not "normally worn by men," and therefore, could not be classified as a "tie." However, based on the article's durable construction, Customs held that it was an apparel accessory of HTS heading 6217, subject to high duties and textile quotas. ("And now, Monsieur, step this way, we have just zee accessory to complete your wardrobe.")

Once again, through the magic of Customs rulings, America is quota-protected against a flood of foreign ties with bladders! (Customs Headquarters Ruling 958002, Sept. 22, 1995)

And then, there was "Mr. Piddle Bib," advertised as "The Answer to Man's Most Absorbing Problem." The bib featured a hole, strings to tie it around the wearer's hips, and was designed for . . . well, you get the idea (Even if you don't get the idea, we're not going to say any more about it).

US consumers buy some of the strangest things

Customs decided that "Mr. Piddle Bib" was not a practical-joke article, but was rather "other" madeup textile articles of HTS heading 6307. This classification left open the possibility that the article might, at some future time, be subjected to textile quota restraints.

Much has been written about the

economic evils of the textile quota system, but one can't help but think that a government program that protects Americans from unrestrained imports of "Mr. Piddle Bib" can't be all bad. (Customs Headquarters Ruling 950564, March 13, 1992)

Remember, actual Americans are buying these things. Actual people in foreign countries are making them (and, no doubt, wondering about Americans). And real-life Customs officials have to write rulings about them (which must make for interesting conversation when the "what have you been doing" question is put to them at alumni reunions).

Thus, thanks to the Customs ruling program, the trading community knows that "Boob Muffs," earmuffs shaped like . . . well, guess . . . are quota-restrained apparel accessories. (New York Customs Ruling 808090, April 28, 1995)

Chew on this one: rubber lollipops

We all sleep better knowing that "imitation wound" — pencil punctures, fish hook wounds, and nails driven through fingers — are "festive or other entertainment" articles of HTS heading 9505 (New York Customs Ruling 815997, Nov. 14,

1995). And the ever-popular "condom lollipop" — featuring a rubber condom, rolled up into the shape of a lollipop and attached to a stick — is classified as other articles of vulcanized rubber under HTS heading 4016 — and not, we repeat not as confectionery. (Customs Headquarters Ruling 955050, Feb. 28, 1994)

What other Federal agency issues rulings like these? And this is just a small sampling of some of the stranger Customs rulings on the books.

Which brings us back to the cat antlers. You might wonder how cat antlers are classified. Well, for now, we're not telling. Instead, we invite our readers to submit their best guesses on how to classify these engines of modern American commerce.

We also invite our readers to submit their candidates for the best and funniest Customs rulings out there. We'll announce the winners in a future column. And the grand prize winner might just get a "Mr. Piddle Bib," if we can find one.

Customs Update is a weekly column examining critical aspects of the relationship between customs agencies and importers. The column is prepared by the law firm Neville, Peterson & Williams and reflects the opinion of the writer. Please address any questions to Customs Update, Trade Desk, The Journal of Commerce, Two World Trade Center, Suite 2750, New York, N.Y. 10048.

11/6/96

Import ABCs

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Knowledge of classification rules helps importers determine duties

The tariff rate of an imported commodity is determined according to its precise commodity classification as well as its valuation.

The classification rules are set forth in a series of volumes known as the Harmonized Tariff Schedule of the United States (HTSUS). The Harmonized Tariff Schedule is the result of an international customs convention among member nations of the General Agreement on Tariffs and Trade, now the World Trade Organization, to uniformly describe the thousands of commodities globally traded. Organized according to product type, the tariff schedule assigns a number and description to each commodity. Every country uses the same four-digit number and description.

For example, 8467 represents "tools for working in the hand, pneumatic, hydraulic or with self-contained nonelectric motor and parts thereof." Beyond the four-digit code, countries utilize their own subcategories and descriptions, differentiated by six, eight and 10-digit code numbers. For example under the HTSUS, 8467.11.10 covers "pneumatic, rotary type (tools) suitable for metal working," dutiable at 4.5% at "most-favored-nation" status rate. France's HTS may or may not refer to the same subcategory at

the same duty rate. Likewise, each country has its own duty preference columns to the right of the product description. That same hand tool, for instance, is duty free imported from Mexico under the North American Free Trade Agreement.

All sets of rules must be consulted

The HTSUS contains several distinct sets of rules for governing classification, all of which must be consulted. The six General Rules of Interpretation (GRI) articulate the general principles of classification which apply to every HTSUS chapter.

For example, Rule 2(a) states, in part, that commodity descriptions are intended to include a reference to that article in its incomplete or unfinished form provided that upon entry, the incomplete or unfinished article has the essential character of the complete or finished article.

Since the "essential character" of an article is often disputed by importers and the U.S. Customs Service alike, case law contains many precedential rulings of how that term

has been interpreted over the years.

GRI 3(a), for example, provides in part that when merchandise appears to be classifiable under two or more headings (as is frequently and confusingly the case), the most specific heading governs; again, administrative and judicial case law contains abundant examples as to what qualifies as more specific language in competing provisions.

An importer of liquid crystal displays, for instance, would encounter a reference to LCDs under heading 9013 dutiable at 6.9% as well as a reference under heading 8531, dutiable at 2.1%. While it might be tempting to opt for the 2.1% heading, the headings apply to different types of LCDs, although this may not be obvious at first glance.

Following the GRIs, the HTSUS also contains four additional rules of interpretation that address among other issues tariff classification based on the use of a commodity as well as what is intended by provisions for "parts" or "parts and accessories" of particular items.

Notes describe what's in section

To assist importers in ascertaining precisely what the headings are intended to cover, each section of the HTS (which contains a group of chapters devoted to a particular product type) offers detailed section notes. Each section begins with a set of section notes which specify what is or is not covered by the chapters in that section.

For example, the notes to Section XVI tell us that certain conveyor belts, though obviously mechanical, are excluded from coverage by any chapter in that section.

Section XVI, Note 3, tells us that "composite" machines consisting of

two or more machines fitted together to form a whole are fitted together to perform complementary functions are classifiable according to the machine or component performing the "principal function." Predictably, the term "principal function" is often disputed.

In addition to the section notes, an importer must also consult the chapter notes preceding each HTSUS chapter. Like the section notes, these notes also specify what is intended by a particular classification number.

Importer shouldn't assume anything

An item might not be excluded by the section notes, but may be excluded by the chapter notes because it does not meet the given definition of the product type covered. Hence, an importer can make no assumptions about what is covered until all the notes are perused.

Finally, if an importer is still stumped after reviewing these rules and notes, a four-volume series, the Explanatory Notes to the HTS, offers detailed interpretations of what the classification headings cover. Organized the same way as the HTS itself, they serve as its official legislative history, an indispensable companion guide to decipher the labyrinthine rules and definitions of the HTS.

Import ABCs is a biweekly column that examines critical aspects of importing. If you have questions about exporting issues, we'll answer them in an upcoming column. The information in the column should not be construed as legal advice or opinion. Please address any questions to Donald L. Fischer Esq., Import ABCs, Trade Desk, The Journal of Commerce, Two World Trade Center, Suite 2750, New York, N.Y. 10048.

TALKING TRADE

G.R.P.

Import
ABCs

Donald L. Fischer, Esq.

Finding the right classification
to determine duty rates can be a puzzle

Importers who file Customs entries on a variety of products know that figuring out tariff classifications needed to determine correct duty rates can be a jigsaw puzzle that ways seems to lack the "right" piece.

The drafters of the Harmonized Tariff System understood that there had to be a universally accepted set of rules designed to help importers choose between two conflicting classifications. This set of rules is known as the General Rules of Interpretation (GRIs) and is found in the beginning pages of the Harmonized Tariff Schedule of the United States.

Classification concerns are not idiosyncratic. Conflicts occur within a single harmonized schedule product group, such as automatic data processing machines; between harmonized schedule chapters, such as those which cover data processing machines and telephone equipment; between entire sections of the schedule, such as those which cover raw and finished materials; and between one country's interpretation of a particular provision and that of another country.

After warning an importer in the General Rules of Interpretation I that section, chapter and heading numbers only serve as indexing guides,

the General Rules of Interpretation 2 makes clear that tariff descriptions of a particular article are intended to cover not only the article in its complete form, but one that is incomplete or unfinished, provided that in its entered form it has the character of the complete or finished article.

Under certain circumstances, Customs will also overlook the fact that a simple assembly process is necessary to complete the finished item. For example, many importers have merchandise shipped to them segregated by components for convenience, which they then assemble into a kit.

Where the components coming from one shipper are clearly designated in exact quantities for kit assembly and as such are not entered into general inventory or sold as components per se, Customs has considered this to be an "incomplete" article classifiable at the rate associated with the finished kit.

As part of Rule 2, the General Rules of Interpretation note that

references to materials or substances are intended to cover mixtures or combinations of that material or substance with other materials or substances. This rule, for example, would apply to many of the provisions in the chemical and pharmaceutical chapters.

When essential character governs classification

General Rules of Interpretation 3 is the core rule for handling conflicting classifications. It says that, given a conflict between two or more classifications, the one with the most specific description governs. Easy enough.

But what happens when each of the conflicting descriptions only refers to part of an item that is a composite of those parts or mixture of elements?

The classification may adequately describe that part, but only that part. In this case, the classification covering the part or component which gives the item its "essential character" is the one which governs.

Again, the Customs rulings are replete with disputes over what the essential character of an item is. Where the essential character cannot be determined, the classification occurring last in numerical order governs. In this example, a classification occurring later in Chapter 84 would prevail over one occurring earlier.

General Rules of Interpretation 4 acknowledges there may be goods for which there is simply no tariff reference in whole or part: These goods should be classified according to how an item most similar to it would be classified.

General Rules of Interpretation 5 sets forth a specific rule covering such items as cases and containers (camera, musical instruments, gun cases, for example) that are specifically designed to contain an article or set of articles, suitable for long term use, and entered with the articles for which they are intended.

The container's class
may be separate

These types of containers are classified with the principal article if normally sold with that article. However, if the essential character of the item contained depends on the container, then the container is classified separately. Packing materials entered with the goods are classified with the goods if normally used for packing them. However, when clearly suitable for repetitive use, the packing materials may in some cases be classified separately.

Finally, General Rules of Interpretation 6 provides that when comparing tariff descriptions, only those descriptions at the same level should be compared. For instance, headings at the six-digit description level are comparable for deciding which is more specific, headings at the four- and six-digit level should not be used for comparison.

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