

Dated: March 11, 1996.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96-6269 Filed 3-14-96; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 13-01]

Delegation of Authority to the Assistant Secretary (Financial Markets) for the Government Securities Act of 1986 and the Government Securities Act Amendments of 1993 ("GSAA of 1993")

Dated: March 8, 1996.

1. *Purpose:* This Directive delegates to the Assistant Secretary (Financial Markets) the authority under the Government Securities Act of 1986 and the GSAA of 1993 ("Acts").

2. *Background:* These Acts require the Secretary of the Treasury to promulgate certain regulations concerning government securities brokers and dealers. The Secretary's authority has been delegated to the Under Secretary (Domestic Finance) by Treasury Order (TO) 100-06, "Delegation of Authority to the Under Secretary (Domestic Finance) for the Government Securities Act of 1986 and Government Securities Act Amendments of 1993."

3. *Delegation:* The authority of the Secretary of the Treasury under the Government Securities Act of 1986, and the GSAA of 1993, to exercise and to perform all duties, powers, rights, and obligations under those Acts, which authority is vested in the Under Secretary (Domestic Finance) pursuant to TO 100-06, is hereby redelegated to the Assistant Secretary (Financial Markets).

4. *Redelegation:*

a. The Assistant Secretary (Financial Markets) may redelegate the authority delegated herein to any official under the supervision of the Assistant Secretary or to the Fiscal Assistant Secretary.

b. Matters delegated to the Fiscal Assistant Secretary may, with the consent of the Assistant Secretary (Financial Markets), be redelegated by the Fiscal Assistant Secretary to any official under the supervision of the Fiscal Assistant Secretary.

5. *Authorities:*

a. The Government Securities Act of 1986 (Pub. L. 99-571).

b. The GSAA of 1993 (Pub. L. 103-202).

c. TO 100-06, "Delegation of Authority to the Under Secretary

(Domestic Finance) for the Government Securities Act of 1986 and Government Securities Act Amendments of 1993."

6. *Cancellation:* Treasury Directive 13-01, "Delegation of Authority to the Deputy Assistant Secretary (Federal Finance) for the Government Securities Act of 1986 and the Government Securities Act Amendments of 1993" ("GSAA of 1993"), dated October 18, 1995, is superseded.

7. *Expiration Date:* This Directive shall expire three years from the date of issuance unless cancelled or superseded by that date.

8. *Office of Primary Interest:* Office of the Under Secretary (Domestic Finance). John D. Hawke, Jr.,

Under Secretary (Domestic Finance).

[FR Doc. 96-6263 Filed 3-14-96; 8:45 am]

BILLING CODE 4810-25-P

Customs Service

[TD 96-24]

Tariff Classification of Headbands and Similar Articles

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final interpretive ruling.

SUMMARY: This document gives notice of the change in classification of certain textile headbands, ponytail holders and similar articles under the Harmonized Tariff Schedule of the United States (HTSUS). In past rulings, Customs has classified certain textile headbands in heading 9615, HTSUS, which provides for, "[C]ombs, hair-slides and the like; hair pins, curling pins, curling grips, hair curlers and the like, other than those of heading 8516, and parts thereof." Classification within heading 9615, HTSUS, was based on Customs' erroneous assumption that all-textile headbands were a form of "hair-slide" and therefore expressly included within this provision of the nomenclature. Customs has since learned that "hair-slides" are semi-circular loops of rigid construction that are worn on the head. The rigid component of a hair-slide may or may not be covered with textiles or other materials. Several events transpired which caused Customs to reexamine its classification of textile headbands and ponytail holders within heading 9615, HTSUS. First, at its Tenth Session, the Harmonized System Committee of the World Customs Organization, formerly known as the Customs Cooperation Council, approved certain amendments to the "Harmonized Commodity Description and Coding System, Explanatory Notes," one of which excluded textile

headbands from heading 9615, HTSUS. Also, the popularity of all-textile hair accessories led to an increase in the importation of these types of articles. Customs was confronted with the classification of assorted types of textile hair articles, namely ponytail holders and items commercially referred to as "scrunchies." These types of articles were being entered by importers under both heading 9615 and headings 6117 and 6217, HTSUS. Clearly, a reexamination of the classification of these articles was in order and Customs reviewed the language and scope of heading 9615, HTSUS. Customs concluded that the language of heading 9615, HTSUS, implicitly contemplates articles of rigid or semi-rigid construction; this is evidenced by the fact that every article set forth in the heading language is of rigid or semi-rigid construction. On this basis, Customs determined that headbands, ponytail holders and similar articles, made entirely of textile materials, are not classifiable within heading 9615, HTSUS. Moreover, Customs has reviewed numerous newspaper and magazine articles which persuasively establish that textile headbands, ponytail holders and similar articles are treated in the trade and commerce of the United States as "accessories." Based on the foregoing factors, Customs proposed classifying knitted or woven textile headbands, ponytail holders and similar articles in headings 6117 or 6217, HTSUS, respectively, as "other clothing accessories." This proposal was published in a Federal Register document on April 20, 1994. After review of the comments, Customs has determined that textile headbands, ponytail holders and similar holders are classifiable in heading 6117 or 6217, HTSUS, but that such articles of mixed construction should be classified in accordance with General Rule of Interpretation (GRI) 3.

DATES: This decision will be effective as to merchandise entered for consumption, or withdrawn from warehouse for consumption, after June 13, 1996.

FOR FURTHER INFORMATION CONTACT: Hubbard Volenick, Office of Regulations and Rulings, U.S. Customs Service, (202) 482-7050.

SUPPLEMENTARY INFORMATION:

Background

Classification of merchandise under the Harmonized Tariff Schedule of the United States (HTSUS) is in accordance with the General Rules of Interpretation (GRI's) taken in order. GRI 1 provides that classification shall be determined

according to the terms of the headings and any relative section or chapter notes.

Section XI, HTSUS, provides for textiles and textile articles. Heading 6117, HTSUS, provides for other made up clothing accessories, knitted or crocheted. Heading 6217, HTSUS, provides for other made up clothing accessories, not knitted or crocheted. Heading 9615, HTSUS, provides for combs, hair-slides and the like, hairpins, curling pins, curling grips, hair-curlers, and the like, other than those of Heading 8516, and parts thereof.

At its Tenth Session the Harmonized System Committee of the World Customs Organization, formerly known as the Customs Cooperation Council, examined the classification of knitted headbands and approved the following three amendments to the text of the "Harmonized Commodity Description and Coding System, Explanatory Notes":

1. *Explanatory Note to Heading 61.17 (page 845, new item (12))*: "Headbands, used as protection against the cold, to hold the hair in place, etc."

2. *Explanatory Note for exclusions to Heading 63.07 (page 868, last paragraph, new item (e))*: "Knitted headbands (heading 61.17)."

3. *Explanatory Note to Heading 96.15 (page 1611, new last paragraph)*: "This heading excludes textile headbands (Section XI)."

The "Explanatory Notes" to the Harmonized Commodity Description and Coding System (Harmonized System) constitute the official interpretation of the scope and content of the nomenclature at the international level. They represent the considered views of classification experts of the Harmonized System Committee. While not treated as dispositive, the "Explanatory Notes" are to be given considerable weight in Customs interpretation of the HTSUS. It has therefore been the practice of the Customs Service to consult the terms of the "Explanatory Notes" when interpreting the HTSUS. See T.D. 89-80, 54 FR 35127 (August 23, 1989).

In the past, Customs has classified headbands wholly of textile materials in heading 9615, HTSUS, with the exception of headbands made of terry knit fabric which were classified in heading 6117, HTSUS. The rationale for these decisions was based on Customs' erroneous conclusion that textile headbands met the definition of the term "hair-slides and the like." In the course of preparing Headquarters Ruling Letter (HRL) 089086, dated May 22, 1992, Customs researched the definition

of the term "hair-slide" and concluded that such articles are of rigid or semi-rigid construction. The pre-amendment Explanatory Notes to heading 9615, HTSUS, supported Customs' interpretation in that they stated that "hair-slides and the like are usually made of plastics, ivory, bone, horn, tortoise-shell, metal, etc." In HRL 089086, Customs concluded that as the textile headband at issue was not of a rigid or semi-rigid material, it was "incongruous" with the articles of heading 9615.

In a document published in the Federal Register (59 FR 18771) on April 20, 1994, Customs furnished notice that the classification of the subject merchandise was under review and requested comments from interested parties.

Seven submissions were received in response to that document. All seven opposed the change in classification.

Discussion of Comments

Comment: The U.S. tariff breakout under statistical subheading 9615.19.6010, HTSUS, was intended for textile headbands and ponytail holders.

Response: The HTSUS is a hierarchical system in which articles first must be classified under the applicable four digit heading, then at the six and eight digit levels, and finally at the statistical level. The issue here is whether the subject merchandise is classified in heading 6117 (or 6217), HTSUS, or in heading 9615, HTSUS. A classification analysis of the subject merchandise does not begin with a comparison of headings 6117 or 6217, HTSUS, and a statistical breakout at the ten digit level. An analysis of the language of heading 9615, HTSUS, reveals that this heading covers hair articles of a rigid or semi-rigid construction (i.e., combs, hair-slides, assorted types of curlers and hair pins). The pre-amendment Explanatory Notes to heading 9615, HTSUS, support this interpretation. Accordingly, classification of a textile headband, ponytail holder or similar article, of a non-rigid construction, is inappropriate within heading 9615, HTSUS. Although the commenter correctly notes that subheading 9615.19.6010, HTSUS, provides for hair-slides and the like made "of textile materials," this in no way means that headbands, ponytail holders and similar articles made entirely from textile materials are classifiable here. As stated *supra*, hair articles made entirely from textile materials, of a non-rigid construction, are not classifiable within heading 9615, HTSUS. Subheading 9615.19.6010, HTSUS, contemplates the classification

of articles which are, at a minimum, made of a rigid or semi-rigid construction, and which also have textile components. An example of an article classifiable within subheading 9516.19.6010, HTSUS, would be a rigid hair-slide which is covered with a textile.

Lastly, we note that statistical subheadings (10 digit level) are created for statistical purposes; they have no legal effect and generally are not relevant to the classification of merchandise. See 19 U.S.C. 1484(f). Consequently, there is no legal basis for classifying the subject merchandise under subheading 9615.19.6010, HTSUS, based on the alleged intent of the creation of that statistical subheading.

Comment: The contemplated classification change is contrary to prior determinations by U.S. Government agencies.

Response: The concern here is that classifying the subject merchandise in headings 6117 or 6217, HTSUS, would subject the merchandise to quota, which it is not subject to in heading 9615, HTSUS. Some commenters stated that the Committee for the Implementation of Textile Agreements (CITA) had no intention of bringing this merchandise under quota. Textile categories are assigned to certain subheadings at the statistical level; therefore, whether an article is subject to a textile category is dependent on classification of the merchandise. Goods cannot be classified under the HTSUS based on what textile category would apply, but instead must be classified in accordance with the GRI's.

We note that Customs will propose, to the 484(f) Committee, the creation of statistical breakouts within headings 6117 and 6217, HTSUS, for merchandise the subject of this notice, so that such articles could maintain their current treatment concerning quota and visa requirements.

Comment: Classification of the subject merchandise solely by reference to the "Explanatory Notes" is contrary to law.

Response: As stated *supra*, classification of the subject merchandise is not based solely upon the Explanatory Notes. Classification of textile headbands, ponytail holders and similar articles within headings 6117 or 6217, HTSUS, is based primarily on these articles' recognized status as accessories and the fact that they are not classifiable within heading 9615, HTSUS, inasmuch as they are not of a rigid or semi-rigid construction. Customs' exclusion of textile headbands, ponytail holders and similar articles from heading 9615, HTSUS, is supported by the Explanatory

Notes, both in their pre-amendment format and in the amended version. As we stated in the Federal Register notice on this issue, we understand that the "Explanatory Notes" are not dispositive, but are to be given considerable weight and are to be consulted. That position is consistent with relevant court cases on the issue of the application of the "Explanatory Notes." (See, e.g., *Lynteq, Inc. v. United States*, 976 F.2d 693, 699 (1992) (quoting H.R. Conf. Rep. No. 576, 100 Cong., 2d Sess. 549 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1582), which states "[although generally indicative of proper interpretation of the various provisions of the [Harmonized Tariff System], the Explanatory Notes * * * are not legally binding.]" (See also, T.D. 89-80, 54 FR 35127 (August 23, 1989), notice giving guidance for interpretation of Harmonized System, in which it is stated, "Customs will give considerable weight to Explanatory Notes."))

Comment: Textile headbands and ponytail holders are not clothing accessories and therefore are not classifiable in headings 6117 and 6217, HTSUS.

Response: The term "accessory" is not defined in the tariff schedule or the "Explanatory Notes." Consequently, Customs and the courts have relied on standard lexicographical sources for a definition of the term "accessory." (See *Auto-Ordinance Corp. v. U.S.*, 822 F.2d 1566 (Fed. Cir. 1987), and *U.S. v. Liebert*, 59 CCPA 43, C.A.D. 1035, 450 F.2d 1405 (1971)) "Webster's Third New International Dictionary, Unabridged" (1986) defines "accessory" as "an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else * * *". Any of various articles of apparel (as a scarf, belt, or piece of jewelry) that accent or otherwise complete one's costume."

Textile headbands and ponytail holders accent or otherwise complete one's costume. In addition, these articles can be decorative and add to the beauty of one's costume or function to hold the hair in place and add to the effectiveness of one's costume. We believe textile headbands and ponytail holders meet the definition of "accessory." This position is supported by the manner in which certain textile hair accessories, commercially identified as "scrunchies," are treated in the trade and commerce of the United States. Customs has reviewed numerous newspaper and magazine articles describing "scrunchy" ponytail holders and similar items as accessories.

Some commenters argue that clothing accessories are made to be used with a

particular item, or are attached or are parts of garments. These commenters argue, therefore, that textile headbands and ponytail holders are not clothing accessories. Many articles are not made to be used with a particular item and are classified as clothing accessories. For example, socks (heading 6115, HTSUS); gloves (headings 6116 and 6216, HTSUS); and scarves (headings 6117 and 6214, HTSUS). In addition, Customs has classified articles as other clothing accessories which are not made to be used with particular articles, e.g., earmuffs, and textile wrist bracelets. Therefore, we do not believe it inconsistent with the classification of other articles as accessories to classify textile headbands and ponytail holders as accessories.

Comment: Since ponytail holders were not excluded from heading 9615, HTSUS, in the amendments to the "Explanatory Notes," they should be classified in heading 9615, HTSUS.

Response: Ponytail holders, both in function and decorative effect, are substantially similar to textile headbands. It would create an artificial distinction to treat these two types of articles differently for tariff classification purposes unless expressly directed to do so by the terms of the tariff schedule. As stated above, we are not classifying textile headbands and ponytail holders within headings 6117 or 6217, HTSUS, based solely on amendments to the "Explanatory Notes." We believe both textile headbands and ponytail holders meet the definition of "clothing accessories" and, as discussed in some detail above, they are not classifiable within heading 9615, HTSUS. Consequently, we believe that textile ponytail holders are not classifiable in heading 9615, HTSUS, despite not being specifically excluded from that heading by the "Explanatory Notes."

Comment: The knit woolen headband under consideration by the Harmonized System Committee which led to the amendments to the "Explanatory Notes" has a different function from many textile headbands.

Response: The language of the amendments to the "Explanatory Notes" states that textile headbands are excluded from heading 9615, HTSUS. This exclusionary language is fairly broad and does not indicate that only knit woolen headbands should be excluded from heading 9615, HTSUS. In addition, when the issue of textile headbands was considered by the Harmonized System Committee, comments made by the Secretariat supported this position. For example, the Secretariat stated, " * * * the

articles specifically cited in the text of heading 9615 do not seem in any way related to products of textile materials." Thus, we cannot agree that the exclusionary amendment to heading 9615 for textile headbands is in any way limited to knit woolen headbands.

Comment: Heading 9615, HTSUS, is a use provision that encompasses hair ornaments, including headbands and ponytail holders.

Response: Heading 9615, HTSUS, provides for combs, hair-slides and the like, hairpins, curling pins, curling grips, hair curlers, and the like. There is nothing in the language of this heading that indicates that classification is controlled by use. Some commenters have relied on the language of the "Explanatory Notes," which states that heading 9615 covers "hair slides and the like for holding the hair in place or for ornamental purposes." We cannot agree that this language shows that heading 9615, HTSUS, is a use provision. To conclude that all articles used to hold the hair in place or for ornamental purposes are classifiable as hair-slides of heading 9615, HTSUS, would result in many articles erroneously being classified in this heading. For example, such articles as scarves, hats, visors, and other headwear, would be classifiable in heading 9615, HTSUS, when they are clearly classified elsewhere. Consequently, we cannot agree with those commenters who argue that heading 9615, HTSUS, is a use provision.

Comment: The subject merchandise should not be classified on the basis of whether it is of rigid or semi-rigid construction or primarily of textile materials since such language is not contained in the HTSUS or the "Explanatory Notes."

Response: The "Explanatory Notes" to heading 9615 exclude "textile headbands," but include "hair-slides and the like" and note that these articles are usually made of plastics, ivory, bone, horn, tortoise-shell, metal, etc. The language to which the commenters object represents Customs' interpretation of the scope of the pertinent headings in light of the "Explanatory Notes" and absent any lexicographic definitions for "hair slides and the like."

Some commenters have suggested that those articles of mixed construction, e.g., textiles and plastics, are *prima facie*, classifiable in two headings, either heading 6117 or 6217, HTSUS, (depending on whether of knit or other textile, e.g., woven construction), and heading 9615, HTSUS. In those cases, the commenters argued that the

remaining GRI's should be applied, specifically GRI 3.

GRI 3 states that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more headings, classification shall be effected as follows:

(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.

(c) When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

After careful consideration of these comments, we believe they have merit. By application of GRI 1, headbands, ponytail holders and similar articles, of mixed construction, are classifiable in heading 6117 or 6217, HTSUS, and heading 9615, HTSUS, and therefore GRI 3 provides the relevant analysis.

GRI 3(a) does not apply when two or more headings each refer to part only of the materials in a good. Note 1 to Chapter 61, HTSUS, states that this chapter applies only to made up knitted or crocheted articles. Similarly, Note 1 to Chapter 62, HTSUS, states that this chapter applies only to made up articles of any textile fabric other than wadding, excluding knitted or crocheted articles. Thus, articles of headings 6117 and 6217, HTSUS, are textiles. These headings refer to only part of the good when it is made of mixed construction, e.g., textiles and plastics. Similarly, heading 9615, HTSUS, which according to the "Explanatory Notes" normally refers to goods made of plastics, ivory, bone, horn, tortoise-shell, metal, etc., refers to only part of the good when it is made of mixed construction, e.g., plastic and textiles. Thus, GRI 3(a) is inapplicable.

The subject goods of mixed construction, therefore, would be classifiable in accordance with GRI 3(b), and an essential character determination must be made. This would be done on a case by case basis. In many cases, we

believe that articles of mixed construction would remain classifiable in heading 9615, HTSUS. For example, a barrette or clasp of plastic or metal decorated or covered with textile material normally would be classified in heading 9615, HTSUS, since the essential character of the article is imparted by the base, which functions to hold the hair in place. There may be circumstances where neither the textile nor non-textile component imparts the essential character, in which case classification would be in accordance with GRI 3(c).

Conclusion

After careful analysis of the comments submitted and further study of this matter, Customs finds that textile headbands, ponytail holders and similar articles are classified as other clothing accessories of heading 6117 or 6217, HTSUS. Those articles of mixed construction, textiles and another material, e.g., plastics, will be classified in accordance with GRI 3.

To allow sufficient time for interested parties to be aware of this change and to make necessary arrangements, this change in classification is being delayed 90 days from the date of publication in the Federal Register.

George J. Weise,

Commissioner of Customs.

Approved: February 16, 1996.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 96-6144 Filed 3-14-96; 8:45 am]

BILLING CODE 4820-02-P

Internal Revenue Service

[EE-14-81]

Proposed Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(C)(2)(a)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, EE-14-81, Deductions and Reductions in Earnings and Profits (or Accumulated

Profits) With Respect to Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Corporations or by Foreign Branches of Domestic Corporations (Regulation § 1.04A).

DATES: Written comments should be received on or before May 14, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Deductions and Reductions in Earnings and Profits (or Accumulated Profits) With Respect to Certain Foreign Deferred Compensation Plans Maintained by Certain Foreign Corporations or by Foreign Branches of Domestic Corporations.

OMB Number: 1545-1393.

Regulation Project Number: EE-14-81 Notice of Proposed Rulemaking.

Abstract: The regulation provides guidance regarding the limitations on deductions and adjustments to earnings and profits (or accumulated profits) for certain foreign deferred compensation plans.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,250.

Estimated Time Per Respondent: The estimated annual reporting burden per respondent varies from 5 hours to 1,000 hours, depending on individual circumstances, with an estimated average of 507.56 hours.

Estimated Total Annual Burden Hours: 634,450 hours.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the