REVOCAUTION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF POLYURETHANE COATED GLOVES

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

ACTION: Notice of revocation of one ruling letter and revocation of treatment relating to the tariff classification of polyurethane coated gloves.

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 Customs and Border Protection (CBP) is revoking New York Ruling Letter (NY) N238691, dated February 26, 2013, with regard to the tariff classification of polyurethane coated gloves under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin Vol. 46, No. 35, on August 22, 2012. Two comments were received in opposition to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 31, 2014.

FOR FURTHER INFORMATION CONTACT: Claudia Garver, Tariff Classification and Marking Branch: (202) 325–0024

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 to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the tariff classification of polyurethane coated gloves was published on August 22, 2012, in Volume 46, Number 35 of the *Customs Bulletin*. Two comments were received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject 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 ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In NY N238691, CBP determined that one style of polyurethane coated gloves was classified in heading 3926, HTSUS, which provides for “Other articles of plastics and articles of other materials of headings 3901 to 3914.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N238691 in order to reflect the proper classification of the polyurethane coated gloves in heading 6116, HTSUS, according to the analysis contained in Headquarters Ruling Letter (HQ) *H246529*, which is attached to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.
Dated: January 7, 2014

Myles B. Harmon,
Director
Commercial and Trade Facilitation Division

Attachment
This is in reference to New York Ruling Letter (NY) N013115, issued to you on July 19, 2007, as well as NY N042821, issued to Performance Fabrics on November 21, 2008. NY N013115 and NY N042821 classified three styles of polyurethane coated gloves in heading 3926, HTSUS, as articles of plastic. For the reasons set forth below, we have determined that the classification of these gloves in heading 3926, HTSUS, was incorrect.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N013115 and modify NY N042821 was published on August 22, 2012, in Volume 46, Number 35, of the Customs Bulletin. Two comments were received in opposition to this Notice, and are addressed in this decision.

FACTS:

NY N013115 described the styles 540 and 541 as follows:

Style #540 (HPPE Palm Fit Glove) and #541 (HPPE Palm Plus Glove), are 100% High Performance Polyethylene Fiber (HPPE) string knit gloves featuring a polyurethane palm coating on the outer surface of the palms, from fingertips to wrist, which also overlaps the backside fingertips. A polyurethane coating has also been applied to the underside fabric of the palms. The gloves are used for assembly operations where cut resistance and dexterity is desired. NY N042821 correctly classified two styles of gloves, 9010 and 9004, in heading 6116, HTSUS, and incorrectly classified one style, 9003, in heading 3926, HTSUS. The subject styles are described as follows:

Style 9010 is a string-knit work glove with a polyurethane coating, which covers the entire palm as well as a portion of the palmside cuff, and overlaps the backside fingertips and sides of the wearer's hands and fingers. You have indicated that the weight of the coating is less than 50% of the weight of the glove. The glove features an inner lining on the palmside, which you state is constructed of a resin coated 100% polyester crepe woven fabric. The glove also features a ribbed knit wrist with an overlock stitch finish at the bottom cuff and the “HEXAMOR” trademark located on the center backside of the glove. You state that the fiber content of the gloves is 100% Taeki5 (an ultra-high molecular weight polyethylene man-made fabric).
Style 9004 is a string-knit work glove with a rubber (nitrile) dip coating, which covers the entire palm as well as a portion of the palmside cuff, and overlaps the backside fingertips and sides of the wearer’s hands and fingers. You have indicated that the weight of the coating is less than 50% of the weight of the glove. The glove features an inner lining on the palmside, which you state is constructed of a resin dot coated 100% polyester crepe woven fabric. The glove also features a ribbed knit wrist with an overlock stitch finish at the bottom cuff and the “HEXAMOR” trademark located on the center backside of the glove. You state that the fiber content of the gloves is 100% nylon.

Style 9003 is a string-knit work glove with a complete palmside, from fingertips to wrist made of a textile fabric that has been completely coated on both sides with a polyurethane plastic. Polyurethane plastic also covers a portion of the palmside cuff, and overlaps the backside fingertips and sides of the wearer’s hands and fingers. You have indicated that the weight of the coating is less than 50% of the weight of the glove. The glove features an inner lining on the palmside, which you state is constructed of a resin coated 100% polyester crepe woven fabric. The glove also features a ribbed knit wrist with an overlock stitch finish at the bottom cuff, the “HEXAMOR” trademark located on the center backside of the glove and a label sewn onto the backside cuff bottom that states “Armor Inside!” You state that the fiber content of the gloves is 100% Taeki5 (an ultra-high molecular weight polyethylene man-made fabric).

**ISSUE:**

Whether the subject gloves are classified in heading 3926, HTSUS, as other articles of plastic, or heading 6116, HTSUS, as gloves.

**LAW AND ANALYSIS:**

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification 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:

3926: Other articles of plastics and articles of other materials of headings 3901 to 3914:

3926.20: Articles of apparel and clothing accessories (including gloves, mittens and mitts):

Gloves, mittens and mitts:

3926.20.10: Seamless...

* * * * *

6116: Gloves, mittens and mitts, knitted or crocheted:

6116.10: Impregnated, coated or covered with plastics or rubber:

Other:

Without fourchettes:
Other:

6116.10.55: Containing 50 percent or more by weight of cotton, man-made fibers or other textile fibers, or any combination thereof.

* * * * * *

Legal Note 1 to Section XI provides, in pertinent part:

1. This section does not cover:

   (h) Woven, knitted or crocheted fabrics, felt or nonwovens, impregnated, coated, covered or laminated with plastics, or articles thereof, of chapter 39;

Note 2 to Chapter 39 provides as follows:

2. This chapter does not cover:

   (p) Goods of section XI (textiles and textile articles);

Note 2 to Chapter 59 provides, in pertinent part:

2. Heading 5903 applies to:

   (a) Textile fabrics, impregnated, coated, covered or laminated with plastics, whatever the weight per square meter and whatever the nature of the plastic material (compact or cellular), other than (emphasis added):

   (3) Products in which the textile fabric is either completely embedded in plastics or entirely coated or covered on both sides with such material, provided that such coating or covering can be seen with the naked eye with no account being taken of any resulting change of color (chapter 39);

   ... 

   (5) Plates, sheets or strip of cellular plastics combined with textile fabric, where the textile fabric is present merely for reinforcing purposes (Chapter 39).

* * * * * *

NY N013115 and NY N042821 classified three styles of polyurethane coated gloves in heading 3926, HTSUS, as articles of plastic. For the reasons set forth below, we believe that these gloves (style nos. 540, 541, and 9003) were incorrectly classified in heading 3926, HTSUS, and that they are correctly classified in heading 6116, HTSUS.

Note 2(p) to Chapter 39, HTSUS, states that the Chapter does not cover goods of Section XI (textiles and textile articles). Note 1(h) to Section XI, however, excludes, inter alia, articles of knitted or crocheted fabrics coated, covered, impregnated or laminated with plastics, of Chapter 39. Although these notes would appear to conflict, Note 2 to Chapter 59, HTSUS, clarifies the scope of Chapter 39 with regard to textiles coated with plastics and sets out definitive criteria for the determination of which fabrics that have been impregnated, coated, covered, or laminated with plastics are classifiable in Chapter 39, HTSUS, at GRI 1, and thus excluded from Section XI.
Note 2(a)(3) to Chapter 59 directs the classification of textile articles in which the textile fabric is either “completely” embedded or “entirely coated or covered on both sides” by plastics to Chapter 39. The instant gloves are covered only on the inside and outside of the palmside, not including the wrist cuff, and on a portion of the backside fingers (inside and outside). The remainder of the gloves, including the entire back side, are composed of non-coated textile fabric. Thus, the gloves are only partially covered or coated with plastic and are not described by Note 2(a)(3) to Chapter 59 or heading 3926, HTSUS.

You state that the textile material of the instant gloves is present only for reinforcing purposes, and that the gloves should therefore be classified in Chapter 39 pursuant to Note 2(a)(5) to Chapter 39. The instant gloves are not subject to Note 2(a)(5) because they are not combined with cellular plastic. They are governed instead by Note 2(a)(3) to Chapter 59, HTSUS. See e.g., HQ H021883, dated January 5, 2009. In any case, however, the textile component of the instant gloves is present for more than mere reinforcement. The plastic coating may be said to reinforce the textile because it makes the textile substrate less permeable and more resistant to cuts or abrasions. However, it is meaningless to say that the textile fabric is reinforcing the plastic coating. The substrate of the gloves is entirely constructed of textile. The textile gives the gloves their form and shape, thickness, strength, etc. The textile material also provides stretch and give to the gloves, allowing them to be put on, used and removed without difficulty. In addition, the textile material, being more permeable than plastic, permits the gloves to be worn more comfortably, because it traps less perspiration than the plastic material. See e.g., HQ 955193, dated April 19, 1994; HQ 953768, dated July 23, 1993; HQ 086358, dated June 19, 1991.

Heading 6116, HTSUS, provides for gloves. Although heading 6116, HTSUS, is in Section XI, it is only the heading text which controls, not the Chapter or Section titles. Thus, heading 6116, HTSUS, is not limited to textile gloves only. Indeed, the heading text does not limit the classification of gloves of that heading by the material of their construction, only the method of construction (i.e., the glove must be knitted or crocheted). Thus, heading 6116, HTSUS, includes gloves of textiles and plastics, or textiles coated with plastics. The instant glove is made entirely of a knit textile material which is subsequently coated with plastic. At GRI 1, heading 6116, HTSUS therefore captures the merchandise in its entirety.

Even if the gloves were not excluded from Chapter 39 on the basis of Note 2(p) to that Chapter, the EN to heading 3926, HTSUS, indicates that the heading includes only plastic articles not described more specifically elsewhere in the tariff schedule. Heading 6116, HTSUS, provides for “gloves”, a considerably more specific description of the merchandise than “other article of plastic.” As the subject gloves are more specifically provided for in heading 6116, HTSUS, they are precluded from classification in heading 3926, HTSUS.

We further note that although subheading 3926.20, HTSUS, also provides for gloves of plastic, the instant articles must first meet the terms of the heading before we can consider the application of the accompanying subheadings. As the subject merchandise is not properly classifiable at the four digit level in heading 3926, HTSUS, it is improper to invoke subheading 3926.20, as only the four digit headings are comparable. Furthermore, subheading
HTSUS, also provides for gloves impregnated or coated with plastics. It is therefore clear that gloves impregnated with plastics are not automatically or even primarily classified in heading 3926, HTSUS. The relevant chapter, section and explanatory notes clarify when it is appropriate to classify such merchandise in heading 3926, HTSUS—e.g., when they are coated entirely on both sides by plastic, or when the textile material is merely present for reinforcement.


In contrast, the following rulings have classified gloves composed entirely or primarily of plastic in heading 3926, HTSUS: NY N188017, dated November 7, 2011; NY L85718, dated July 15, 2005; NY K89356, dated September 21, 2004; NY J89922, dated October 23, 2003; NY H88929, dated March 20, 2002; NY 808945, dated May 3, 1995; NY 883923, dated April 13, 1993; NY 870145, dated January 22, 1992; and PD C80478, dated November 4, 1997.

Moreover, in all of the rulings cited above, CBP based the classification of gloves composed of only textile fabrics with plastic coating solely on GRI 1, noting that some prior rulings had erroneously utilized GRI 3(b) to classify similar merchandise without first considering GRI 1. In HQ 086358, CBP further noted that classification based on GRI 3(b) was appropriate when classifying gloves composed of what the HTSUS would consider to be two or more separate and distinct materials, but that textile gloves which are merely coated with plastic are considered to be made of one material, in which case classification will be according to GRI 1. HQ 088539 is an example of the former scenario. In HQ 088539, CBP determined that the classification of gloves of textile coated or impregnated with plastics is determined at GRI 1 by Note 2 to Chapter 59, but GRI 3(b) would apply when considering the leather pieces of the golf glove at issue. Thus, the classification of the instant gloves, which are knit gloves coated, covered or dipped in plastic, is governed, at GRI 1, by the legal notes to Chapters 39, 59 and Section XI. See e.g., HQ 088539, supra (“Accordingly, as between the plastics and the textile fabric, GRI 1 would require classification under Heading 6116”). See also HQ 086358, and HQ 953768, supra.

Both commenters cite to HQ 967658, dated October 13, 2005, as support for classification in heading 3926, HTSUS, based on a GRI 3(b) analysis. First, we note that HQ 967658 classified a similar plastic-coated textile glove in heading 6116, HTSUS. HQ 967658 thus supports classification of the instant gloves in heading 6116, HTSUS. We further note that HQ 967658 applied GRI 3(b) to determine classification at the 8-digit subheading level between subheading 6116.10.75, HTSUS (gloves containing 50% or more by weight of
cotton), and subheading 6116.93.94, HTSUS (gloves of synthetic fibers). GRI 3(b) was not used in HQ 967658 to determine classification at the 4-digit level.

One comment noted that textile gloves dipped in polyurethane were not coated, impregnated or covered pursuant to Note 2 to Chapter 59 and Note 1 to Section XI. We do not concur. Regardless of how the plastic material is applied, the glove is covered or coated with plastic pursuant to the above legal notes, and pursuant to the description of the glove provided by the importer. The commenter cites HQ 085863, dated January 19, 1990, in support of this argument. We note that the gloves discussed in HQ 085863 were excluded from heading 5903, HTSUS, by application of Note 2(a)(5) to Chapter 59, HTSUS, because they had a cellular plastic shell and a textile backing for reinforcing purposes. As discussed above, the instant gloves are constructed entirely of textile which is covered with plastic.

Another comment notes that other CBP rulings have classified only gloves coated on one side in heading 6116, HTSUS. As noted above, CBP has classified gloves submerged or dipped in plastic in a similar manner as the gloves at issue in heading 6116, HTSUS. That the instant gloves have plastic on both sides, however, is irrelevant, because they are made of textile material which is neither completely embedded nor entirely coated or covered on both sides with plastic, and the textile material is present for more than mere reinforcement. Stating that merely coating the fabric on both sides is sufficient to render the fabric “completely embedded” or “entirely coated or covered” pursuant to Note 2(a)(3) to Chapter 59 when the coating does not cover the entire fabric is contrary to the plain language of Note 2(a)(3).

We further note that the samples provided for CBP's examination by the commenter and images of the gloves classified in NY N013115 show that the plastic coating on the inside of the glove is less extensive and consistent than on the outside; the coating is significantly less thick, and the knit textile fabric is clearly visible. Nevertheless, even if, as argued in the comment, both sides of the palmside of the glove were determined to be equally evenly coated, we would not consider the textile fabric of the glove to be “completely” embedded or “entirely coated or covered on both sides” by plastics, as there remains uncoated textile portions of the glove. Style 9003 in NY N042821 was described as having a palmside, from fingertips to wrist, completely coated with plastic. In accordance with the foregoing, we do not consider that to be “completely embedded” or “entirely coated or covered” for purposes of Note 2(a)(3) to Chapter 59.

The glove styles 540 and 541 (NY N013115) and 9003 (NY N042821) were incorrectly classified as articles of plastic of heading 3926, HTSUS. They are correctly classified in heading 6116, HTSUS, as gloves. NY N013115 is thus hereby revoked, and NY N042821 is modified with respect to the classification of style 9003.

**HOLDING:**

Styles 540, 541 and 9003 are classified in heading 6116, HTSUS, specifically subheading 6116.10.55, HTSUS, which provides for “Gloves, mittens and mitts, knitted or crocheted: Impregnated, coated or covered with plastics or rubber: Other: Without fourchettes: Other: Containing 50 percent or more by weight of cotton, man-made fibers or other textile fibers, or any combination thereof.” The 2013 general, column one rate of duty is 13.2%.
Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on World Wide Web at http://www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY N013115 is hereby revoked, and NY N042821 is hereby modified with respect to the classification of style 9003.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division