

HQ 966057  
February 27, 2003  
CLA-2: RR: CR:TE 966057 JFS  
CATEGORY: Classification  
TARIFF NO.: 5809.00.0000  
Louis T. Gnecco, President Tempest, Inc.

112 Elden Street Herndon, VA 20170  
Re: Classification of Vinyl Coated Electrically Conductive Fabric of Metallised Yarns;  
GRI 4.

Dear Mr. Gnecco:

This is in response to your letters dated September 17, 2002, and October 12, 2002, requesting a binding ruling on the tariff classification of electrically conductive fabric under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA).

**FACTS:**

The sample submitted, labeled Snowtex 7674/1043, is a swatch of a tight plain weave fabric that is coated or laminated on one side with vinyl. Each yarn of the fabric is composed of a silver plated copper yarn that is twisted with approximately 75 polyester filament yarns to make one true yarn. The fabric is manufactured in, and will be imported from, Switzerland.

In a letter dated September 17, 2002, you requested classification of the instant fabric, stating generally that the fabric reflects radar signals. By letter dated October 9, 2002, Customs returned your request and asked that you submit additional information regarding, in part, how the fabric will be used after importation. You replied by letter dated October 12, 2002, wherein you state that the fabric will be used to make bags, tents, or rooms that provide shielding against radio interference; make mats or straps to prevent electrostatic discharge; and make protective clothing to protect pacemakers and other prosthetic devices against high intensity radio signals.

**ISSUE:**

What is the classification of woven fabric of metallised yarns that is coated or laminated with vinyl?

**LAW AND ANALYSIS:**

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI's). 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 (EN's) represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN's, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUSA, and are generally indicative of the proper interpretation of these headings.

Initially it would appear that there are three possible headings in which the subject fabric may be classified. The fabric could be classified in (1) heading 5809, HTSUSA, as woven fabric of metallised yarn, (2) heading 5903, HTSUSA, as a fabric coated or laminated with plastics, or (3) heading 5911, HTSUSA, as a textile product for technical uses.

The first heading, 5809, HTSUSA, provides for "Woven fabrics of metal thread and woven fabrics of metallized yarn of heading 5605, of a kind used in apparel, as furnishing fabrics or for similar purposes, not elsewhere specified or included." The EN for heading 5605, HTSUSA, provide guidance as to what constitutes metallised yarn. The EN state, in pertinent part, that the heading covers:

Yarn consisting of any textile material (including monofilament, strip and the like and paper yarn) combined with metal thread or strip, whether obtained by a process of twisting, cabling or by gimping, whatever the proportion of the metal present. . . .

The yarns that comprise the subject fabric, being composed of a copper thread twisted with polyester filament yarns, meet the definition of metallised yarn of heading 5605, HTSUSA. Classification of the fabric in heading 5809, HTSUSA, requires more than a finding that the fabric is of metallized yarns. The language of the heading requires that the fabric be "of a kind used in apparel, as furnishing fabrics or for similar purposes[.]" The EN to heading 5809, HTSUSA, state that:

This heading covers woven fabrics . . . of the metallised yarns of heading 56.05, and also woven fabrics of the metal threads of Section XIV or XV, provided they are fabrics of a kind used for clothing, furnishing or similar purposes, and are not specified or included elsewhere, in particular in any of the preceding headings of this Chapter.

\* \* \*

The heading excludes woven fabrics not of a kind used for clothing, furnishing or similar purposes, e.g., wire gauze or woven cloth of iron, steel, copper, aluminum, precious metals, etc. (headings 71.15, 73.14, 74.14, 76.16, etc.).

Based on the information supplied, the instant fabric will be used in clothing, tents, mats, and protective covers. These are all purposes that are the same as, or similar to, those enumerated in the EN. Thus, it appears that the fabric would be classified in heading 5809, HTSUSA, as a fabric of metallised yarn of heading 5605. However, it must be noted that this heading does not fully describe the fabric due to the layer of vinyl.

The second potential heading in which to classify the fabric is heading 5903, HTSUSA, which provides for: "Textile fabrics impregnated, coated, covered or laminated with plastics, other than those of heading 5902." Because the fabric is coated or laminated with vinyl, classification in heading 5903, HTSUSA, would appear to be appropriate. However, Note 1 to Chapter 59 states that:

Except where the context otherwise requires, for the purposes of this chapter the expression "textile fabrics" applies only to the woven fabrics of chapters 50 to 55 and headings 5803 and 5806, the braids and ornamental trimmings in the piece of heading 5808 and the knitted or crocheted fabrics of headings 6002 to 6006.

Fabrics of metallised yarns of heading 5809, HTSUSA, are not listed as one of the fabrics covered by Chapter 59. Thus, the instant fabric is not considered a "textile fabric" for purposes of Chapter 59, and is excluded from classification in heading 5903, HTSUSA.

The third heading in which the fabric may be classified is heading 5911, HTSUSA, which provides for: "Textile products and articles, for technical uses, specified in note 7 to this chapter." In order for a fabric to be classified in heading 5911, HTSUSA, two prerequisites need be met: 1) the fabric must be for technical use, and 2) the fabric must be one of the fabrics enumerated in Note 7(a) (i) through (vi). Headquarters Ruling Letter (HQ) 957059, dated January 18, 1995.

Fabric will be considered for technical use if used directly or as a part of machinery or apparatus. See [HQ 958921](#), dated October 17, 1997. "[F]abric which is used as wall coverings, upholstery, window draperies, tents or protective clothing is not deemed for technical use and classification will be precluded from heading 5911, HTSUSA." See [HQ 957059](#). In your submission, you state that:

The Snowtex 7674/1043 electrically conductive fabric has several possible end uses. Among them are: making bags, tents, or rooms that provide shielding against radio interference, making mats or straps to prevent electrostatic discharge, making tarps, tents, patches or covers that reflect radar signals, making ground planes that can improve the efficiency of certain antennas, making special protective clothing to protect pacemakers and other prosthetic devices against high intensity radio signals.

Based on the information provided, the instant fabric will generally be used for clothing, tents, coverings, and mats. Thus, the fabric is not a fabric for technical use and cannot be classified in heading 5911, HTSUSA.

When 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. GRI 2(b) mandates that the classification of goods consisting of more than one material shall be determined according to the principles of GRI 3. GRI 3 is utilized when, by application of GRI 2(b), a good consists of materials or components, which are prima facie classifiable under two or more headings. Application of GRI 3 is precluded because (1)

of the operation of the legal notes, or (2) the fabric is not fully described in the headings.

When merchandise cannot be classified using GRI's 1 through 3, GRI 4 becomes operative. GRI 4 provides that:

Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.

The EN to GRI 4 state as follows:

(I) This Rule relates to goods which cannot be classified in accordance with Rules 1 to 3. It provides that such goods shall be classified under the heading appropriate to the goods to which they are most akin.

(II) In classifying in accordance with Rule 4, it is necessary to compare the presented goods with similar goods in order to determine the goods to which the presented goods are most akin. The presented goods are classified in the same heading as the similar goods to which they are most akin.

(III) Kinship can, of course, depend on many factors, such as description, character, purpose.

The instant fabric is designed to be electrically conductive. The fabric's conductivity enables it to shield against radio interference, prevent electrostatic discharge, reflect radar signals, and protect against high intensity radio signals. The vinyl coating gives the fabric attributes, such as having an insulating layer, that help the fabric perform its function. However, the fact that the fabric is insulated is secondary to the fact that the fabric is electrically conductive. Accordingly, Customs finds that the instant fabric is most akin to other fabrics of metallised yarn. The fabric is classified in heading 5809.00.0000, HTSUSA, which provides for "Woven fabrics of metal thread and woven fabrics of metallized yarn of heading 5605, of a kind used in apparel, as furnishing fabrics or for similar purposes, not elsewhere specified or included."

**HOLDING:**

The electrically conductive fabric is classified in heading 5809.00.0000, HTSUSA, which provides for "Woven fabrics of metal thread and woven fabrics of metallized yarn of heading 5605, of a kind used in apparel, as furnishing fabrics or for similar purposes, not elsewhere specified or included." The general column one rate of duty is 15.1 percent ad valorem and the textile quota/visa category number is 229. As a product of Switzerland, the fabric is not subject to quota/visa restraints.

The designated textile and apparel category may be subdivided into parts. If subdivided, any quota and visa requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, to obtain the most current information available, we

suggest you check, close to the time of shipment, the Status Report On Current Import Quotas (Restraint Levels) an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs Service office. The Status Report On Current Import Quotas (Restraint Levels) is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Web site at [www.customs.gov](http://www.customs.gov).

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

Sincerely,  
Myles B. Harmon, Director Commercial Rulings Division

