

# U.S. Customs and Border Protection

## *General Notices*

### **APPROVAL OF AMSPEC SERVICES LLC, AS A COMMERCIAL GAUGER**

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

**ACTION:** Notice of approval of Amspec Services LLC, as a commercial gauger.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, Amspec Services LLC, 22010 South Wilmington Avenue Suite #304, Carson, CA 90745, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The approval of Amspec Services LLC, as commercial gauger became effective on October 22, 2008. The next triennial inspection date will be scheduled for October 2011.

**FOR FURTHER INFORMATION CONTACT:** Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 24, 2008

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

[Published in the Federal Register, January 5, 2009 (74 FR 312)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Documents Required on Private Aircraft**

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

**ACTION:** 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0058.

**SUMMARY:** U.S. 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: Documents Required on Private Aircraft. 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** (73 FR 63001) on October 22, 2008, 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 January 23, 2009.

**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 the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

U.S. Customs and Border Protection (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 (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:** Documents Required Aboard Private Aircraft

**OMB Number:** 1651-0058

**Form Number:** None

**Abstract:** These documents are required by CBP regulations for private aircraft arriving from foreign countries. They pertain to baggage declarations, and if applicable, to Overflight authorizations. CBP also requires that the pilots present documents required by the FAA.

**Current Actions:** This submission is being made to extend the expiration date.

**Type of Review:** Extension (without change)

**Affected Public:** Business or other for-profit institutions

**Affected Public:** Business or other for-profit institutions

**Estimated Number of Respondents:** 150,000

**Estimated Time Per Respondent:** 1 minutes

**Estimated Total Annual Burden Hours:** 2,490

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: December 16, 2008

TRACEY DENNING,  
*Agency Clearance Officer,*  
*Customs and Border Protection.*

[Published in the Federal Register, December 24, 2008 (73 FR 79150)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Declaration of Owner for Merchandise Obtained  
(otherwise than) in Pursuance of a Purchase or Agreement  
to Purchase and Declaration of Consignee when Entry is  
made by an Agent**

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

**ACTION:** 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0093.

**SUMMARY:** U.S. 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: Declaration of Owner for Merchandise Obtained (other than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Consignee when Entry is Made by an Agent. 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** (73 FR 63000) on October 22, 2008, 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 January 23, 2009.

**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 the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

U.S. Customs and Border Protection (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 (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:** Declaration of Owner for Merchandise Obtained (otherwise than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Consignee When Entry is Made by an Agent.

**OMB Number:** 1651-0093

**Form Number:** CBP Forms-3347 and 3347A

**Abstract:** CBP Forms-3347 and 3347A allow an agent to submit, subsequent to making the entry, the declaration of the importer of record that is required by statute. These forms also permit a nominal consignee to file the declaration of the actual owner, and to be relieved of statutory liability for the payment of increased duties.

**Current Actions:** This submission is being made to extend the expiration date.

**Type of Review:** Extension (without change)

**Affected Public:** Business or other for-profit institutions

**Estimated Number of Respondents:** 5,700

**Estimated Time Per Respondent:** 6 minutes

**Estimated Total Annual Burden Hours:** 570

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: December 16, 2008

TRACEY DENNING,  
*Agency Clearance Officer,*  
*Customs and Border Protection.*

[Published in the Federal Register, December 24, 2008 (73 FR 79149)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**NAFTA Regulations and Certificate of Origin**

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

**ACTION:** 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0098.

**SUMMARY:** U.S. 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: NAFTA Regulations and Certificate of Origin. 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** (73 FR 63002) on October 22, 2008, 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 January 23, 2009.

**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 the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

U.S. Customs and Border Protection (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 (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:** NAFTA Regulations and Certificate of Origin

**OMB Number:** 1651-0098

**Form Number:** CBP Forms 434 and 446

**Abstract:** The objectives of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada and to facilitate conditions of fair competition within the free trade area. CBP uses these forms to verify eligibility for preferential tariff treatment under NAFTA.

**Current Actions:** This submission is being made to extend the expiration date.

**Type of Review:** Extension (without change)

**Affected Public:** Business or other for-profit institutions

**Estimated Number of Respondents:** 120,050

**Estimated Time Per Respondent:** 15 minutes

**Estimated Total Annual Burden Hours:** 30,037

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: December 16, 2008

TRACEY DENNING,  
*Agency Clearance Officer,  
Customs and Border Protection.*

[Published in the Federal Register, December 24, 2008 (73 FR 79151)]

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Dominican Republic-Central America-U.S. Free Trade Agreement (CAFTA)**

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

**ACTION:** 30-Day Notice and request for comments; Extension of an existing information collection: 1651-0125.

**SUMMARY:** U.S. 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: U.S./Central American Free Trade Agreement (CAFTA). 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** (73 FR 63001) on October 22, 2008, 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 January 23, 2009.

**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 the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or faxed to (202) 395-6974.

**SUPPLEMENTARY INFORMATION:**

U.S. Customs and Border Protection (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 (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:** CAFTA

**OMB Number:** 1651-0125

**Form Number:** None

**Abstract:** The collection of data for CAFTA is used to ascertain if claims filed with CBP are eligible for duty refunds.

**Current Actions:** This submission is being made to extend the expiration date.

**Type of Review:** Extension (without change)

**Affected Public:** Business or other for-profit institutions

**Estimated Number of Respondents:** 2,500

**Estimated Total Annual Responses:** 10,000

**Annual Number of Responses per Respondent:** 4

**Estimated Time Per Response:** 24 minutes

**Estimated Total Annual Burden Hours:** 4,000

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.2.C, Washington, D.C. 20229, at 202-344-1429.

Dated: December 16, 2008

TRACEY DENNING,  
*Agency Clearance Officer,  
Customs and Border Protection.*

[Published in the Federal Register, December 24, 2008 (73 FR 79150)]

**ACCREDITATION AND APPROVAL OF SAYBOLT LP, AS A  
COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 18251 Cascades Ave. South Suite A, Tukwila, WA 98188, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on July 29, 2008. The next triennial inspection date will be scheduled for July 2011.

**FOR FURTHER INFORMATION CONTACT:** Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 12, 2008

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

**ACCREDITATION AND APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 1848 Suntide Road, Corpus Christi, TX 78409, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on May 21, 2008. The next triennial inspection date will be scheduled for May 2011.

**FOR FURTHER INFORMATION CONTACT:** Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 12, 2008

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

[Published in the Federal Register, December 22, 2008 (73 FR 78379)]

**ACCREDITATION AND APPROVAL OF INTERTEK USA,  
INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 5401 Evergreen Ave., Jacksonville, FL 32208, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on July 21, 2008. The next triennial inspection date will be scheduled for July 2011.

**FOR FURTHER INFORMATION CONTACT:** Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 12, 2008

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

**ACCREDITATION AND APPROVAL OF SAYBOLT LP, AS A  
COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 1501 Delmar B. Drawdy Dr., Tampa, FL 33605, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on July 23, 2008. The next triennial inspection date will be scheduled for July 2011.

**FOR FURTHER INFORMATION CONTACT:** Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 12, 2008

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

[Published in the Federal Register, December 22, 2008 (73 FR 78380)]

**ACCREDITATION AND APPROVAL OF SAYBOLT LP, AS A  
COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Saybolt LP, as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Saybolt LP, 414 Westchester, Corpus Christi, TX 78469, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of Saybolt LP, as commercial gauger and laboratory became effective on May 20, 2008. The next triennial inspection date will be scheduled for May 2011.

**FOR FURTHER INFORMATION CONTACT:** Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 12, 2008

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

**ACCREDITATION AND APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER AND LABORATORY**

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

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Intertek USA, Inc., 134 Heinsohn Rd. Suite A Corpus Christi, TX 78406, Corpus Christi, TX 78469, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on May 08, 2008. The next triennial inspection date will be scheduled for May 2011.

**FOR FURTHER INFORMATION CONTACT:** Randall Breau, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 12, 2008

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

[Published in the Federal Register, December 22, 2008 (73 FR 78380)]

**APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER**

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

**ACTION:** Notice of approval of Intertek USA, Inc., as a commercial gauger.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.13, Intertek USA, Inc., 1020 Holland Sylvania Road, Holland, OH 43528, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The approval of Intertek USA, Inc., as commercial gauger became effective on September 09, 2008. The next triennial inspection date will be scheduled for September 2011.

**FOR FURTHER INFORMATION CONTACT:** Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 12, 2008

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

**ACCREDITATION OF ALTOL CHEMICAL AND  
ENVIRONMENTAL LAB INC, AS A COMMERCIAL  
LABORATORY**

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

**ACTION:** Notice of accreditation of Altol Chemical and Environmental Lab Inc, as a commercial laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12, Altol Chemical and Environmental Lab Inc, Sabanetas Industrial Park, Building M-1380, Ponce, PR 00715, has been accredited to test petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquires regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation of Altol Chemical and Environmental Lab Inc, as commercial laboratory became effective on September 16, 2008. The next triennial inspection date will be scheduled for September 2011.

**FOR FURTHER INFORMATION CONTACT:** Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 12, 2008

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

**ACCREDITATION OF INSPECTORATE AMERICA CORPORATION, AS A COMMERCIAL LABORATORY**

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

**ACTION:** Notice of accreditation of Inspectorate America Corporation, as a commercial laboratory.

**SUMMARY:** Notice is hereby given that, pursuant to 19 CFR 151.12, Inspectorate America Corporation, 2184 Jefferson Hwy, Lutcher, LA 70071, has been accredited to test petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12. Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquires regarding the specific test this entity is accredited to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344-1060. The inquiry may also be sent to [cbp.labhq@dhs.gov](mailto:cbp.labhq@dhs.gov). Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

[http://cbp.gov/xp/cgov/import/operations\\_support/labs\\_scientific\\_svcs/commercial\\_gaugers/](http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/)

**DATES:** The accreditation of Inspectorate America Corporation, as commercial laboratory became effective on June 24, 2008. The next triennial inspection date will be scheduled for June 2011.

**FOR FURTHER INFORMATION CONTACT:** Randall Breaux, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202-344-1060.

Dated: December 12, 2008

IRA S. REESE,  
*Executive Director,*  
*Laboratories and Scientific Services.*

## Notice of Revocation of Customs Broker License

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

ACTION: General Notice

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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 license is canceled with prejudice.

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
Miguel A. Delgado	11634	Miami

DATED: December 22, 2008

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

[Published in the Federal Register, January 2, 2009 (74 FR 115)]

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.  
*Washington, DC, December 31, 2008*

The following documents of U.S. 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 REVOCATION OF RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF A CERTAIN  
CIGARETTE CASE**

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

ACTION: Notice of proposed revocation of a ruling letter and treatment relating to tariff classification of a cigarette case.

**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) proposes to revoke one ruling letter relating to the tariff classification of a cigarette under the Harmonized Tariff Schedule of the United States (HTSUS). CBP also proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATE:** Comments must be received on or before February 14, 2009.

**ADDRESS:** Written comments are to be addressed to Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street, N.W. (Mint Annex), Washington, D.C. 20229. Submitted comments may be inspected at Customs and Border Protection, 799 9th Street N.W., Washington, D.C. 20001 during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

**FOR FURTHER INFORMATION CONTACT:** Greg Connor, Tariff Classification and Marking Branch: (202) 325–0025

**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, as amended (19 U.S.C. 1625 (c)(1)), this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of a cigarette case. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) 084525, dated August 10, 1989 (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, as amended (19 U.S.C. 1625 (c)(2)), CBP proposes 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 notice of this proposed action.

In HQ 084525, set forth as Attachment A to this document, CBP determined that the subject cigarette case was classified in heading 3923, HTSUS, specifically subheading 3923.10.0000, HTSUSA (1989), which provided for: "[a]rticles of plastic for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: [b]oxes, cases, crates and similar articles . . ." It is now CBP's position that the cigarette case is properly classified in heading 3926, HTSUS, specifically subheading 3926.90.9980, HTSUSA, which provides for: "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: [o]ther: [o]ther . . . [o]ther."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke HQ 084525 and revoke or modify any other ruling not specifically identified, in order to reflect the proper classification of the cigarette case according to the analysis contained in proposed HQ H026225, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions.

Before taking this action, consideration will be given to any written comments timely received.

**DATED:** December 23, 2008

Robert Altneu for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ 084525  
August 10, 1989  
CLA-2 CO:R:C:G 084525 DC  
CATEGORY: Classification  
TARIFF NO.: 3923.10.0000

MR. PETER BIGGS  
MANAGER  
THEXUS GROUP INTERNATIONAL  
16000 Sherman Way #104,  
Los Angeles, CA 91406

RE: Tariff classification of a cigarette case made in New Zealand

DEAR MR. BIGGS:

Your letter dated April 14, 1989, addressed to our New York office concerning the tariff classification of a plastic cigarette case, has been referred to this office for a direct reply to you.

FACTS:

The cigarette case is made of injection molded plastics. It is designed to hold 20 standard cigarettes and a BIC brand lighter.

ISSUE:

Does the cigarette case have an outer surface of plastic sheeting?

LAW AND ANALYSIS:

It has been suggested that this merchandise has an outer surface of plastic sheeting and is, therefore, classifiable under subheading 4202.32.2000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as articles of a kind normally carried in the pocket or in the handbag, with outer surface of plastic sheeting, other.

Various dictionaries define the words "sheet" and "sheeting" as follows:  
The Random House Dictionary of the English language (1983):

sheet 2. a broad, relatively thin, surface, layer or covering. 3. a relatively thin, usually rectangular form, piece, plate, or slab as of photographic film, glass, metal etc.

sheeting 1. the act of covering with or forming into a sheet or sheets.

Webster's Third New International Dictionary of the English Language, Unabridged (1986):

sheet 5: A broad thinly expanded portion of metal or other substance.

sheeting 1: a material in the form of sheets \*\*\* b:

material (as a plastic) in the form of continuous film \*\*\*.

See also *Sekisui Products, Inc. v. United States*, 63 Cust.

Ct. 123, C.D. 3885 (1969) which cites the Webster's definition of "sheets" with approval.

It is our position that the above-cited definitions require a finding that an article which is made directly from a mass of plastic which never becomes a

“sheet” or “sheeting” and which never has a “sheet” or “sheeting” applied to its surface cannot be classified under subheading 4202.32.2000, HTSUSA.

As to whether the cigarette case is an article for the conveyance or packing of goods, we note that the Explanatory Notes for heading 3923, HTSUSA, state that the heading covers all articles of plastics commonly used for packing or conveyance of all kinds of products. Inasmuch as the cigarette case is used to convey cigarettes, it is classifiable under subheading 3923.10.0000, HTSUSA, as articles for the conveyance or packing of goods, of plastics, boxes, cases, crates and similar articles.

**HOLDING:**

The cigarette case is classifiable under subheading 3923.10.0000, HTSUSA, and dutiable at the rate of 3 percent ad valorem.

JOHN DURANT,

*Director Commercial Rulings Division.*

6cc AD NY Seaport 1cc Kevin Gorman NY Seaport 1cc Joan Mazzola NY Seaport 1cc John Durant 1cc Legal Reference DCahill:dc:typed 07/24/89 DCahill library name: 084525

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.

U.S. CUSTOMS AND BORDER PROTECTION,

HQ H026225

**CLA-2 OT:RR:CTF:TCM H026225 GC**

**CATEGORY:** Classification

**TARIFF NO.:** 3926.90.9980

PETER BIGGS

THEXUS GROUP INTERNATIONAL

16000 Sherman Way, #104

Los Angeles, California 91406

**RE:** Tariff classification of a molded plastic cigarette case; revocation of HQ 084525

DEAR MR. BIGGS:

In Headquarters Ruling Letter (HQ) 084525, dated August 10, 1989, Customs and Border Protection (CBP) issued to you a binding ruling on the tariff classification of a plastic cigarette case. We have since reviewed HQ 084525 and find it to be in error.

**FACTS:**

The merchandise subject to HQ 084525 was a cigarette case made of injection molded plastic. It was designed to hold twenty standard cigarettes and a BIC® lighter.

In HQ 084525, CBP held that the subject cigarette case was classifiable under subheading 3923.10.00, HTSUS (1989), which provided for: “[a]rticles of plastic for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: [b]oxes, cases, crates and similar articles.” The subheading remains unchanged in the 2008 version of the HTSUS.

**ISSUE:**

Whether the cigarette case made from molded plastic is classified in heading 3923, HTSUS, as a plastic article for the conveyance of goods, heading 3926, HTSUS, as an other plastic article, or heading 4202, HTSUS, as a cigarette case?

**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:

3923	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics:
3923.10.0000	Boxes, cases, crates and similar articles . . . * * *
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.99	Other . . .
2926.90.9980	Other * * *
4202	Trunks, suitcases, vanity cases, attache case, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper:  Articles of a kind normally carried in the pocket or in the handbag:
4202.32	With outer surface of sheeting of plastic or of textile materials:  With outer surface of sheeting of plastic:
4202.32.2000	Other . . .

Note 2(m) of chapter 39, HTSUS, states that chapter 39 does not cover: “[s]addlery or harness (heading 4201) or trunks, suitcases, handbags or

other containers of heading 4202.” Accordingly, we must first determine that the subject cigarette case does not fall within the terms of heading 4202, HTSUS, before giving consideration to the headings of chapter 39, HTSUS.

As noted above, cigarette cases are enumerated in the second part of the text of heading 4202, HTSUS, which provides that goods of that heading must be “. . . of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper”.

The cigarette case subject to HQ 084525 was not composed of any of the materials listed in the text of the second part of heading 4202, HTSUS, nor was it covered with those materials or with paper. In HQ 084525, we stated correctly that “sheeting of plastics” is distinct from the molded plastic, which comprises the subject merchandise. As cigarette cases are listed in the second part of the heading text, classification in heading 4202, HTSUS, is restricted to cigarette cases composed of the materials listed therein, such as leather, composition leather, sheeting of plastics, textile materials, vulcanized fiber, paperboard, or wholly or mainly covered with such materials or paper.

As a result of our finding in HQ 084525 that the subject cigarette case was not classifiable in heading 4202, HTSUS, we held that it was classifiable in subheading 3923.10.0000, 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.

The EN to heading 3923, HTSUS (EN 3923), provides, in pertinent part:

This heading covers all articles of plastics commonly used for the **packing or conveyance of all kinds of products**. The articles covered include:

- (a) Containers such as boxes, cases, crates, sacks and bags (including cones and refuse sacks), casks, cans, carboys, bottles and flasks. (Emphasis added).

As indicated by the heading text and EN 39.23, above, heading 3923, HTSUS, covers articles of plastic for the conveyance of goods. It is CBP’s consistently stated position that the exemplars listed in EN 39.23 are used generally to convey or transport goods over long distances and often in large quantities. See, e.g., HQ 087635, dated October 24, 1990; HQ 951404, dated July 24, 1992; HQ 953841, dated September 27, 1993; and HQ 963493, dated March 23, 2000. Furthermore, heading 3923, HTSUS, provides for cases and containers used for shipping purposes. See HQ 089825, dated April 9, 1993 and HQ 953275, dated April 26, 1993. Accordingly, heading 3923, HTSUS, provides for cases and containers of bulk goods and commercial goods, not personal items. See HQ 954072, dated September 2, 1993; HQ 963493, *supra*; and HQ 953841, *supra*.

With respect to personal items, CBP has revoked a series of rulings in which containers used for personal articles were classified under heading 3923, HTSUS. In HQ 960199, dated May 15, 1997, we revoked an earlier ruling, NY 887467, dated July 9, 1993, which classified a plastic molded pencil box under heading 3923, HTSUS, and reclassified the article under heading 3926, HTSUS. Citing to the rulings which state that heading 3923,

HTSUS, provides for cases and containers of bulk goods and commercial goods, not personal articles, we found that the pencil boxes transported pens, pencils, erasers, etc. for personal use and were not described by heading 3923, HTSUS. *See also* HQ 960196, dated May 15, 1997; HQ 960198, dated May 15, 1997; HQ 960152, dated May 15, 1997; and HQ 960153, dated May 15, 1997.

The subject cigarette case is not designed to carry bulk or commercial goods. In fact, it is designed to carry twenty cigarettes and a lighter. Stated differently, the subject merchandise is not used in the conveyance of goods, but is designed to facilitate the purchaser's personal transportation and storage of cigarettes in the same manner that the pencil box of HQ 960199 facilitated the personal storage and transportation of pencils. Because the subject cigarette case was designed for the purchaser's personal use with regards to carrying and smoking cigarettes, it is not within the scope of heading 3923, HTSUS. Consequently, it is classifiable under heading 3926, HTSUS, which covers "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914".

**HOLDING:**

By application of GRI 1, the subject cigarette case is classifiable under heading 3926.90.9980 HTSUS, which provides for: "[o]ther articles of plastics and articles of other materials of headings 3901 to 3914: [o]ther: [o]ther . . . [o]ther." The column one, general rate of duty is 5.3 percent *ad valorem*.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

HQ 084525, dated August 10, 1989, is hereby REVOKED.

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

**PROPOSED MODIFICATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE TARIFF CLASSIFICATION OF CRÈME BRÛLÉES**

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

**ACTION:** Notice of proposed modification of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of crème brûlées.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to modify a ruling letter relating to the tariff classification of crème brûlées under the Harmonized Tariff Schedule of the United States (HTSUS). CBP

also 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 February 14, 2009.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial Trade and Regulations Branch, 799 9th Street N.W., Mint Annex, Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118 during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Richard Mojica, Tariff Classification and Marking Branch, at (202) 325-0032.

**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, this notice advises interested parties that CBP intends to modify a ruling letter pertaining to the tariff classification of crème brûlées. Although in this notice, CBP is specifically referring to the modification of New York Ruling Letter (NY) N015908, dated September 5, 2007 (Attachment A), this notice covers any rulings on this merchandise which may ex-

ist 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., a 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 N015908, CBP classified, in relevant part, fully baked crème brûlées imported in a frozen condition in heading 1901, HTSUS, which provides for: "... [F]ood preparations of goods of heading 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included." We have reviewed NY N015908 and determined that the classification set forth in that ruling is incorrect. It is now CBP's position that the subject crème brûlées are properly classified in heading 1905, HTSUS, which provides for: "Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to modify NY N015908, dated September 5, 2007, and any other ruling not specifically identified, to reflect the proper classification of the crème brûlées according to the analysis contained in proposed Headquarters Ruling Letter H023498, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

**DATED:** December 24, 2008

Robert Altneu for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

Attachments

## [ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
N015908  
September 5, 2007  
CLA-2-19:RR:NC:N2:228  
CATEGORY: Classification  
TARIFF NO.: 1901.90.4200; 1901.90.4300;  
1901.90.4600; 1901.90.4700

MR. BRIAN KAVANAUGH  
DERINGER CONSULTING GROUP  
*One Lincoln Blvd.*  
*Rouses Point, NY 12979*

RE: The tariff classification of dessert products from Canada

DEAR MR. KAVANAUGH:

In your letter dated August 10, 2007, on behalf of Marie Morin Canada, Inc., Brossard, PQ, Canada, you requested a tariff classification ruling.

Descriptive literature, ingredients breakdowns, and a sample of the box in which the goods will be imported, accompanied your letter. The sample box was examined and disposed of. Marie Morin brand Crème Brulee, Crème Coffee, and Crème au Caramel are fully cooked custard desserts, imported in frozen condition, in single-serving glass ramekins containing 110-grams, six units in a retail package. A 3-gram sugar pouch is also placed inside the Crème Brulee retail package. The Crème Brulee dessert consists of approximately 47 percent cream, 23 percent milk, 14 percent egg yolks, 12 percent sugar, 5 percent egg whites, and less than one percent vanilla. The Crème Coffee dessert is said to be composed of approximately 46 percent cream, 23 percent milk, 14 percent egg yolks, 12 percent sugar, 4 percent egg whites, and one percent coffee flavor. Crème au Caramel is said to contain approximately 60 percent milk, 18 percent eggs, 12 percent sugar, 10 percent caramel, and one percent vanilla.

The applicable subheading for the Crème Brulee and Crème Coffee products, if imported in quantities that fall within the limits described in additional U.S. note 10 to chapter 4, will be 1901.90.4200, Harmonized Tariff Schedule of the United States (HTSUS), which provides for food preparations of goods of headings 0401 to 0404, not containing cocoa . . . not elsewhere specified or included . . . other . . . other . . . dairy products described in additional U.S. note 1 to chapter 4 . . . dairy preparations containing over 10 percent by weight of milk solids . . . described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions. The rate of duty will be 16 percent ad valorem. If the quantitative limits of additional U.S. note 10 to chapter 4 have been reached, these two products will be classified in subheading 1901.90.4300, HTS, and dutiable at the rate of \$1.035 per kilogram plus 13.6 percent ad valorem.

The applicable subheading for the Crème au Caramel, if imported in quantities that fall within the limits described in additional U.S. note 10 to chapter 4, will be 1901.90.4600, HTSUS, which provides for food preparations of goods of headings 0401 to 0404, not containing cocoa . . . not elsewhere specified or included . . . other . . . other . . . dairy products described in additional U.S. note 1 to chapter 4 . . . other . . . described in additional

U.S. note 10 to chapter 4 and entered pursuant to its provisions. The rate of duty will be 16 percent ad valorem. If the quantitative limits of additional U.S. note 10 to chapter 4 have been reached, this product will be classified in subheading 1901.90.4700, HTS, and dutiable at the rate of \$1.035 per kilogram plus 13.6 percent ad valorem.

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/>.

This merchandise is subject to The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (The Bioterrorism Act), which is regulated by the Food and Drug Administration (FDA). Information on the Bioterrorism Act can be obtained by calling FDA at 301-575-0156, or at the Web site [www.fda.gov/oc/bioterrorism/bioact.html](http://www.fda.gov/oc/bioterrorism/bioact.html).

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

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 Stanley Hopard at 646-733-3029.

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

[ATTACHMENT B]

**HQ H023498**  
**CLA-2 OT:RR:CTF:TCM H023498 RM**  
**CATEGORY:** Classification  
**TARIFF NO.:** 1905.90.90

MR. BRIAN KAVANAUGH  
DERINGER CONSULTING GROUP  
*One Lincoln Blvd.*  
*Rouses Point, NY*

**RE:** Proposed Modification of New York Ruling Letter N015908, Classification of Crème Brûlées

DEAR MR. KAVANAUGH:

This letter is in response to your request of February 7, 2008, for reconsideration of New York Ruling Letter (“NY”) N015908, dated September 5, 2007, issued to you on behalf of your client, Marie Morin Canada, regarding the classification of certain dessert products. On October 21, 2008, you advised that Marie Morin Canada was only seeking reconsideration of NY N015908 as it pertains to the classification of crème brûlées. In that ruling, U.S. Customs and Border Protection (“CBP”) classified, in relevant part, crème brûlées in heading 1901, Harmonized Tariff Schedule of the United States (“HTSUS”), which provides for: “. . . [F]ood preparations of goods of heading 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included.” We have reviewed NY N015908 and found it to be in error as it relates to crème brûlées.

**FACTS:**

The Marie Morin brand crème brûlées are fully baked custards consisting of approximately 47 percent cream, 23 percent milk, 14 percent egg yolks, 12 percent sugar, 5 percent egg whites, and less than 1 percent vanilla. They are imported in a frozen condition, in single-serving glass ramekins containing 110 grams, 6 units per retail package. A 3 gram sugar pouch is placed inside every package. Serving instructions direct the consumer to thaw the product for 20 to 24 hours and then sprinkle and burn the brown sugar topping with a chef torch or by placing it in a conventional oven for 1 to 1 ½ minutes.

**ISSUE:**

Whether the crème brûlées are classified as a “cream” product in heading 1901, HTSUS, or as “bakers’ wares” in heading 1905, HTSUS?

**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:

1901	. . . [F]ood preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:
1901.90	Other: Other: Dairy products described in additional U.S. note 1 to chapter 4: Other:
1901.90.46	Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions . . .
1901.90.47	Other . . .
. . .	
1905	Bread, pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:
1905.90	Other:
1905.90.90	Other . . .

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the Harmonized System at the international level. 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, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 1901, HTSUS, state, in relevant part:

Apart from the preparations excluded by the General Explanatory Note to this Chapter, this heading also **excludes**:

\* \* \* \*

(e) Fully or partially cooked bakers' wares, the latter requiring further cooking before consumption (**heading 19.05**).

The ENs to heading 1905, HTSUS, state, in relevant part:

This heading covers all bakers' wares. The most common ingredients of such wares are cereal flours, leavens and salt but they may also contain other ingredients such as: gluten, starch, flour of leguminous vegetables, malt extract or milk, seeds such as poppy, caraway or anise, sugar, honey, eggs, fats, cheese, fruit, cocoa in any proportion, meat, fish, bakery "improvers", etc. Bakery "improvers" serve mainly to facilitate the working of the dough, hasten fermentation, improve the characteristics and appearance of the products and give them better keeping qualities. The products of this heading may also be obtained from dough based on flour, meal or powder of potatoes.

This heading includes the following products:

\* \* \* \*

(11) **Certain bakery products made without flour** (e.g., meringues made of white of egg and sugar).

In accordance with the terms of heading 1901, HTSUS, we must first determine whether the HTSUS provides for the merchandise in any other heading.

You submit that the crème brûlées are classified as "bakers' wares" in heading 1905, HTSUS. CBP has previously construed the term "bakers' wares" to mean "manufactured articles offered for sale by one [who] specializes in the making of breads, cakes, cookies, and pastries."<sup>1</sup> See HQ H015429, dated December 11, 2007. Most recently, in HQ W968393, dated July 16, 2008, we explained:

The text of heading 1905, HTSUS, provides for "other bakers' wares" which, when read in the context of the entire clause of which this expression is a part, leads us to now find that **the term "other bakers' wares" refers to baked goods (or wares) other than the "bread, pastry, cakes, [and] biscuits" specified in the heading.** In addition, based on the heading text and the examples provided by the ENs, it appears that **goods of heading 1905, HTSUS, are consumed "as is" and are not incorporated into other food items.** (Emphasis added).

Based upon our review of the attached marketing literature submitted with your request for reconsideration, we have concluded that the crème

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<sup>1</sup>This definition was based on the dictionary definition of the word "baker" and the word "wares" since we were unable to find a dictionary that defined the compound term "bakers' wares."

brûlées at issue are manufactured goods offered for sale by one who specializes in the making of pastries. They are akin to the bakery products made without flour (e.g., meringues made of white of egg and sugar) described in EN 19.05 (A)(11)). Moreover, as imported, they are fully baked and ready for consumption “as is”; they are not incorporated into other food items. Accordingly, we find that they constitute bakers’ wares and are classified in heading 1905, HTSUS.

Our conclusion is in keeping with our administrative precedent. See HQ H015429, dated December 11, 2007 (fully baked crème brûlées imported in a frozen condition classified in heading 1905, HTSUS).

**HOLDING:**

By application of GRI 1, the crème brûlées are classified in heading 1905, HTSUS, and provided for under subheading 1905.90.9090, HTSUS, as: “Bread, pastry, cakes, biscuits and other bakers’ wares, whether or not containing cocoa; . . . : Other: Other . . . Other.” The column one, general rate of duty is 4.5 percent *ad valorem*.

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 the Internet at [www.usits.gov/tata/hts/](http://www.usits.gov/tata/hts/).

**EFFECT ON OTHER RULINGS:**

NY N015908, dated September 5, 2007, is hereby modified.

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

DEPARTMENT OF HOMELAND SECURITY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS.  
*Washington, DC, January 7, 2009*

The following documents of U.S. 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 REVOCATION OF TWO RULING LETTERS  
AND PROPOSED REVOCATION OF TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF  
CERTAIN GUN CASE LINERS**

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

**ACTION:** Notice of proposed revocation of two tariff classification ruling letters and proposed revocation of treatment relating to the classification of certain gun case liners.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), this notice advises interested parties that Customs and Border Protection (CBP) proposes to revoke New York Ruling Letter (NY) N015886, dated September 6, 2007, and NY I89555, dated December 31, 2002, relating to the tariff classification of certain gun case liners under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP also 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 February 14, 2009.

**ADDRESS:** Written comments are to be addressed to Customs and Border Protection, Regulations and Rulings of the Office of International Trade, Attention: Tariff Classification and Marking Branch, 799 9th Street, N.W., Mint Annex Washington, D.C. 20229. Submitted comments may be inspected at 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) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Greg Connor, Tariff Classification and Marking Branch: (202) 325-0025

**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 proposes to revoke two ruling letters pertaining to the tariff classification of certain gun case liners. Although CBP is specifically referring to the proposed revocation of NY N015886 (Attachment A) and NY I89555 (Attachment B), 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a 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 proposes 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 the above mentioned rulings, CBP determined that the subject gun case liners were classifiable under subheading 4202.92.9026, HTSUSA, which provides for, in pertinent part: ". . . gun cases . . . : Other: With outer surface of sheeting of plastic or of textile materials: Other: Other . . . With outer surface of textile materials: Other: of man-made fibers". Based upon our analysis of heading 4202, HTSUSA, we have determined that the subject gun case liners are properly classified in subheading 6307.90.9889, HTSUSA, the provision for "Other made up articles, including dress patterns: Other: Other: Other . . . Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP proposes to revoke NY N015886 and NY I89555 and any other ruling not specifically identified, to reflect the proper classification of the subject gun case liner according to the analysis contained in proposed Headquarters Ruling Letters H019364 and H047256, respectively set forth as Attachments C and D to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP proposes to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

**DATED:** December 30, 2008

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

Attachments

## [ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
NO 15886  
September 6, 2007  
CLA-2-42:RR:NC:N3:341  
CATEGORY: Classification  
Tariff NO: 4202.92.9026

BRIAN WAVRA  
KOLPIN POWERSPORTS, INC.  
205 N. Depot Street  
Fox Lake, WI 53933

RE: The tariff classification of a gun case from China or Vietnam

DEAR MR. WAVRA:

In your letter dated August 10, 2007, you requested as classification ruling. The sample which you submitted is being returned.

The sample submitted is identified as style number SAM GBL. It is designed to contain a rifle or shotgun. It is constructed with an outer surface of polyester textile material. The item is a sleeve style case that is specially shaped, fitted, and designed to provide, storage, protection and portability to a gun. The case comes in two pieces and measures approximately 50.5 inches long and 10.5 inches at its widest point.

The applicable subheading for the gun case will be 4202.92.9026, Harmonized Tariff Schedule of the United States (HTSUS), which provides for trunks, suitcases . . . gun cases and similar containers, with outer surface of textile materials, other, other, of man-made fibers. The duty rate will be 17.6 percent ad valorem.

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 the World Wide Web at <http://www.usitc.gov/tata/hts/>.

HTSUS 4202.92.9026 falls within textile category 670. With the exception of certain products of China, 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](http://www.cbp.gov). For current information regarding possible textile safeguard actions on goods from China and related issues, we refer you to the web site of the Office of Textiles and Apparel of the Department of Commerce at [otexa.ita.doc.gov](http://otexa.ita.doc.gov).

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

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 Vikki Lazaro at 646-733-3041 .

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
NY I89555  
December 31, 2002  
CLA-2-42:RR:NC:3:341 I89555  
CATEGORY: Classification  
TARIFF NO.: 4202.92.9026

TIM PARSONS  
C/O PARSONS TRADING  
5 Thunderbird Drive  
Novato, CA 94949-5883

RE: The tariff classification of a soft-side container for a rifle from China

DEAR MR. PARSONS:

In your letter dated December 13th, 2002 you requested a tariff classification ruling.

The submitted sample is a soft-sided container designed to contain a rifle. You have identified the sample as the "Impact Liner". It consists of two sections intended to hold the rifle butt and muzzle ends. The container is wholly made-up of polyurethane foam that is wholly covered on both sides with man-made textile materials of either nylon or polyester fibers. The rifle is placed within the soft-sided cover and both are placed within a rifle case identified as either the "Gun Boot III" or "Gun Boot IV".

The "Gun Boot" is a carrying case for a rifle wholly made up of molded polyethylene plastics and is lined on the interior with a plush pile fabric. The "Gun Boot" is designed to provide storage, protection, organization and portability for the rifle and is of a kind classified in heading 4202, HTSUSA. Although the sample submitted is said to be a lining for the "Gun Boot", it is designed to be removable and similarly use as a container designed to provide the same storage, protection, organization and portability for the rifle. The sample will be returned as requested.

The applicable subheading for the "Impact Liner" will be 4202.92.9026, Harmonized Tariff Schedule of the United States (HTS), which provides for trunks, suitcases, vanity cases . . . of man-made fibers. The rate of duty will be 18.1 percent ad valorem. The rate of duty for such goods effective January 1st, 2003 will be 17.8 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

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 Kevin Gorman at 646-733-3041.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H019364  
**CLA-2 RR:CTF:TCM H019364 GC**  
**CATEGORY:** Classification  
**TARIFF NO.:** 6307.90.9889

MR. BRIAN WAVRA  
KOLPIN POWERSPORTS  
205 N. Depot St.  
Fox Lake, WI 53933

**RE:** Tariff classification of soft gun-case liners; Reconsideration of NY N015886

DEAR MR. WAVRA:

This is in response to your letter, dated September 17, 2007, in which you request reconsideration of New York Ruling Letter (NY) N015886, dated September 6, 2007, which concerned the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of a gun case liner. We have since reviewed NY N015886, and find it to be in error.

**FACTS:**

The liner subject to NY N015886, for which a sample was provided, is identified as style SAM GBL. It is described as a gun case liner constructed with an outer surface of polyester textile material and is shaped to contain a rifle or shotgun. It is in two pieces that, when placed together, measure approximately 50.5 inches long by 10.5 inches wide at its widest point. The two pieces of the liner appear designed to be flush against each other, but there is no mechanism for attaching the two pieces together (i.e. clips, ties, etc.). Hook and loop strips are attached to the ends of both pieces. The loop portion of the hook and loop strip can be attached via an adhesive strip to the inside of another case. The hook portion of the hook and loop strip is sewn into the exterior of the liner. The merchandise is not equipped with a handle or strap. In NY N015886, CBP classified the subject liner under heading 4202, HTSUS, which provides for, in pertinent part, "gun cases". You suggest that the subject merchandise is properly classifiable under heading 6307, HTSUS, as an "other made up article".

**ISSUE:**

Whether the subject merchandise is classified in heading 4202, HTSUS, as a gun case, or heading 6307, HTSUS, as an other made up textile article?

**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 in this case are as follows:

4202 Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:

Other:

4202.92 With outer surface of sheeting of plastic or of textile materials:

Other:

4202.92.90 Other . . .

With outer surface of textile materials:

Other:

4202.92.9026 Of man-made fibers

\* \* \*

6307 Other made up articles, including dress patterns:

6307.90 Other:

Other:

6307.90.98 Other . . .

Other:

6307.90.9889 Other

Note 1 to Chapter 63, HTSUS, states that Subchapter 1 of Chapter 63 applies only to made up articles, of any textile fabric.

Note 7 to Section XI, HTSUS (which covers heading 6307, HTSUS), states, in pertinent part:

For the purposes of this section, the expression “made up” means:

\* \* \*

- (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

As described in the relevant part of EN 42.02, heading 4202, HTSUS, “covers **only** the articles specifically named therein and similar containers”. (Emphasis in original). With regards to cases similar to those listed *eo nomine* in heading 4202, HTSUS, the following guidance is provided in EN 42.02:

The expression “similar containers” in the first part includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc.

With regards to the scope of heading 6307, HTSUS, EN 63.07 states that the heading excludes, among other articles, “travel goods (suit-cases, rucksacks, etc.), shopping-bags, toilet cases, etc., and all similar containers of **heading 4202**.” (Emphasis in original).

Because containers of heading 4202, HTSUS, are excluded from classification in heading 6307, HTSUS, we must first consider whether the instant merchandise falls under heading 4202, HTSUS.

Gun cases are designated *eo nomine* (by name) in heading 4202, HTSUS. However, the instant merchandise is a gun case liner, so the *ejusdem generis* (of the same kind) rule of statutory construction is applied. Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrases, the general word or phrase is held to refer to things of the same kind as those specified. With respect to classification analysis, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms. See *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1392 (Fed. Cir. 1994).

In *Totes, Inc. v. United States* (herein after *Totes*), the Court of International Trade applied the *ejusdem generis* rule to determine that the “Totes Trunk Organizer”, was of the same kind of merchandise as those listed *eo nomine* in heading 4202, HTSUS, by virtue of the fact that the trunk organizer shared the essential characteristics of the containers listed in the heading text – organizing, storing, protecting, and carrying various items. See *Totes*, 865 F.Supp. 867, 872 (C.I.T. 1994), *aff’d*, 69 F.3d 495 (Fed. Cir. 1995). Heading 4202, HTSUS, as noted in the *Totes* decision, contains an extensive list of cases, all of which are fitted containers designed to organize, store, protect and carry other articles. See also Headquarters Ruling Letter (HQ) 963696, dated July 11, 2002 (finding that the “Gun Boot Skin”, a two-piece textile article designed to camouflage a gun case, is classified in heading 6307, HTSUS, because it was not a “gun case” or a “similar container” under heading 4202, HTSUS).

Like the merchandise discussed in HQ 963696, the subject gun case liner is not designed for transportation of the contents, as it is not equipped with a handle or strap for transporting a gun. Unlike the merchandise subject to *Totes*, the gun case liner does not feature compartments or pockets for organizational purposes, nor does it feature any mechanism to seal their two pieces together. The hook and loop strips located on the ends of the pieces are clearly designed to attach the pieces of the liner to the inside of a gun case. A mechanism for sealing the two pieces of the gun liner together would be necessary not just for easy transportation of a gun, but also to seal the liner from dirt or other debris. Consequently, the fact that the subject gun case liner lacks a handle and organizational compartments or pockets, as well as a mechanism to attach both pieces of the liner indicates that it is not designed to organize, store, protect and carry a gun independently of a gun case. As such, it is not considered a “similar container” described by the terms of heading 4202, HTSUS.

The liner is a textile article produced in the finished state, ready for use without sewing or other working. *See* Note 7(b) to Section XI, HTSUS. As such, the subject liner meets the terms of Note 7, and the terms of Note 1 to Chapter 63, HTSUS. Therefore, it is provided for under 6307, HTSUS. *See* HQ 961056, dated February 11, 1998, and HQ 959178, dated June 24, 2006 (where CBP classified golf bag liners according to their constituent material because they were not considered golf bags of heading 4202, HTSUS).

**HOLDING:**

By application of GRI 1, the subject gun liner, model number SAM GBL, is classified in heading 6307, HTSUS, as a made up textile article, and specifically provided for in subheading 6307.90.9889, HTSUS, which provides for: “Other made up articles, including dress patterns: Other: Other: Other: Other: Other.” The general column one rate of duty, for merchandise classified in these subheadings is 7 percent *ad valorem*.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY N015886, dated September 6, 2007, is hereby REVOKED.

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

## [ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H047256  
**CLA-2 RR:CTF:TCM H047256 GC**  
**CATEGORY:** Classification  
**TARIFF NO.:** 6307.90.9889

TIM PARSONS  
PARSONS TRADING  
5 Thunderbird Drive  
Novato, California 94949-5883

**RE:** Tariff classification of soft gun-case liners; Reconsideration NY I89555

DEAR MR. PARSONS:

This letter is to inform you that Customs and Border Protection (CBP) has reconsidered New York Ruling Letter (NY) I89555, dated December 31, 2002, which concerns the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of the “impact liner”. We have since reviewed NY I89555 and find it to be in error.

**FACTS:**

The “impact liner”, subject to NY I89555, consists of two sections and is wholly made-up of polyurethane foam covered on both sides with man-made textile materials of either nylon or polyester fibers. It is stated in NY I89555 that a rifle is placed in the liner, which is then placed in some version of the “Gun Boot”, which is a hard plastic case.

In NY I89555, CBP concluded that the “impact liner” was designed to provide the “same storage, protection, organization and portability for a rifle” as the hard plastic “Gun Boot” cases with which it is used. Consequently, the “impact liner” was found to be classifiable under heading 4202, HTSUS, which provides for, in pertinent part, “gun cases”.

We have since learned that when in use, the two sections that make up the “impact liner” are designed to be flush against each other and there is no mechanism for attaching the two pieces together (i.e. clips, ties, etc.). Hook and loop strips are attached to the ends of both pieces. The loop portion of the hook and loop strip are attached via an adhesive strip to the inside of the “Gun Boot” or some similar hard plastic gun case. The hook portion of the hook and loop strip is sewn into the exterior of the liner. The “impact liner” is not equipped with a handle or strap.

**ISSUE:**

Whether the subject merchandise is classified in heading 4202, HTSUS, as a gun case, or heading 6307, HTSUS, as an other made up textile article?

**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 in this case are as follows:

4202 Trunks, suitcases, vanity cases, attache cases, brief-cases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:

Other:

4202.92 With outer surface of sheeting of plastic or of textile materials:

Other:

4202.92.90 Other . . .

With outer surface of textile materials:

Other:

4202.92.9026 Of man-made fibers

\* \* \*

6307 Other made up articles, including dress patterns:

6307.90 Other:

Other:

6307.90.98 Other . . .

Other:

6307.90.9889 Other

Note 1 to Chapter 63, HTSUS, states that Subchapter 1 or Chapter 63 (which covers heading 6307, HTSUS) applies only to made up articles, of any textile fabric.

Note 7 to Section XI, HTSUS, states, in pertinent part:

For the purposes of this section, the expression “made up” means:

\* \* \*

- (b) Produced in the finished state, ready for use (or merely needing separation by cutting dividing threads) without sewing or other working (for example, certain dusters, towels, tablecloths, scarf squares, blankets);

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), though not dispositive or legally binding, provide commentary

on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. CBP believes the ENs should always be consulted. See T.D. 89–90, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

As described in the relevant part of EN 42.02, heading 4202, HTSUS, “covers **only** the articles specifically named therein and similar containers”. (Emphasis in original). With regards to cases similar to those listed *eo nomine* in heading 4202, HTSUS, the following guidance is provided in EN 42.02:

The expression “similar containers” in the first part includes hat boxes, camera accessory cases, cartridge pouches, sheaths for hunting or camping knives, portable tool boxes or cases, specially shaped or internally fitted to contain particular tools with or without their accessories, etc.

With regards to the scope of heading 6307, HTSUS, EN 63.07 states that the heading excludes, among other articles, “travel goods (suit-cases, rucksacks, etc.), shopping-bags, toilet cases, etc., and all similar containers of **heading 4202**.” (Emphasis in original).

Because containers of heading 4202, HTSUS, are excluded from classification in heading 6307, HTSUS, we must first consider whether the instant merchandise falls under heading 4202, HTSUS.

Gun cases are designated *eo nomine* (by name) in heading 4202, HTSUS. However, the instant merchandise is a gun case liner, so the *ejusdem generis* (of the same kind) rule of statutory construction is applied. Under the rule of *ejusdem generis*, where an enumeration of specific things is followed by a general word or phrases, the general word or phrase is held to refer to things of the same kind as those specified. With respect to classification analysis, *ejusdem generis* requires that the imported merchandise possess the essential characteristics or purposes that unite the articles enumerated *eo nomine* in order to be classified under the general terms. See *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1392 (Fed. Cir. 1994).

In *Totes, Inc. v. United States* (herein after *Totes*), the Court of International Trade applied the *ejusdem generis* rule to determine that the “Totes Trunk Organizer”, was of the same kind of merchandise as those listed *eo nomine* in heading 4202, HTSUS, by virtue of the fact that the trunk organizer shared the essential characteristics of the containers listed in the heading text – organizing, storing, protecting, and carrying various items. See *Totes*, 865 F.Supp. 867, 872 (C.I.T. 1994), *aff’d*, 69 F.3d 495 (Fed. Cir. 1995). Heading 4202, HTSUS, as noted in the *Totes* decision, contains an extensive list of cases, all of which are fitted containers designed to organize, store, protect and carry other articles. See also Headquarters Ruling Letter (HQ) 963696, dated July 11, 2002 (finding that the “Gun Boot Skin”, a two-piece textile article designed to camouflage a gun case, is classified in heading 6307, HTSUS, because it was not a “gun case” or a “similar container” under heading 4202, HTSUS).

Like the merchandise discussed in HQ 963696, the “impact liner” is not designed for transportation of the contents, as it is not equipped with a handle or strap for transporting a gun. Unlike the merchandise subject to *Totes*, the liner does not feature compartments or pockets for organizational purposes, nor does it feature any mechanism to seal their two pieces together. The hook and loop strips located on the ends of the pieces are clearly designed to attach the pieces of the liner to the inside of a gun case. A

mechanism for sealing the two pieces of the gun liner together would be necessary not just for easy transportation of a gun, but also to seal the liner from dirt or other debris. Consequently, the fact that the subject gun case liner lacks a handle, organizational compartments or pockets, as well as a mechanism to attach both pieces of the liner indicates that it is not designed to organize, store, protect and carry a gun independently of a gun case. As such, it is not considered a “similar container” described by the terms of heading 4202, HTSUS.

The liner is a textile article produced in the finished state, ready for use without sewing or other working. *See* Note 7(b) to Section XI, HTSUS. As such, the subject liner meets the terms of Note 7, and also meets the terms of Note 1 to Chapter 63, HTSUS. Therefore, it is provided for under 6307, HTSUS. *See* HQ 961056, dated February 11, 1998, and HQ 959178, dated June 24, 2006 (where CBP classified golf bag liners according to their constituent material because they were not considered golf bags of heading 4202, HTSUS).

**HOLDING:**

By application of GRI 1, the subject “impact liner” is classified in heading 6307, HTSUS, as a made up textile article, and specifically provided for in subheading 6307.90.9889, HTSUS, which provides for: “Other made up articles, including dress patterns: Other: Other: Other: Other: Other.” The general column one rate of duty, for merchandise classified in these subheadings is 7 percent *ad valorem*.

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY I89555, dated December 31, 2002, is hereby REVOKED.

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

**REVOCATION OF A RULING LETTER AND REVOCATION  
OF TREATMENT RELATING TO THE TARIFF  
CLASSIFICATION OF A SEAT HEATER ASSEMBLY FOR  
AUTOMOBILES**

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

**ACTION:** Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of a seat heater assembly for automobiles.

**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, 2186 (1993), this no-

tice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of a seat heater assembly for automobiles under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 42, No. 42, on October 9, 2008. Five comments were received in response to the notice.

**DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after March 16, 2009.

**FOR FURTHER INFORMATION CONTACT:** Richard Mojica, Tariff Classification and Marking Branch, at (202) 325-0032.

**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, this notice advises interested parties that CBP is revoking a ruling letter pertaining to the tariff classification of a seat heater assembly for automobiles. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N004869, issued on January 24, 2007, 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 addi-

tion to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the 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 is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in the 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.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N004869 and any other ruling not specifically identified, to reflect the proper classification of the seat heater assembly according to the analysis contained in Headquarters Ruling Letter (HQ) H035440 (Attachment). We note that CBP had proposed to classify the seat heater assembly under heading 8543, HTSUS, but in response to arguments made in the comments received, we are classifying the merchandise under heading 8516, HTSUS. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the Customs Bulletin.

**DATED:** December 30, 2008

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

Attachment

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
**HQ H035440**  
December 30, 2008  
**CLA-2 OT:RR:CTF:TCM H035440 RM**  
**CATEGORY:** Classification  
**TARIFF NO.:** 8516.80.80

MR. DAVE KRACKER  
KURABE AMERICA CORPORATION  
39111 West Six Mile Road  
Livonia, MI 48152

**RE:** Revocation of NY N004869; Classification of a Seat Heater Assembly for Automobiles

DEAR MR. KRACKER:

This letter is in reference to New York Ruling Letter (“NY”) N004869, issued to Kurabe American Corporation on January 24, 2007, concerning the tariff classification of a seat heater assembly for automobiles. In that ruling, U.S. Customs and Border Protection (“CBP”) classified the merchandise under heading 9401, Harmonized Tariff Schedule of the United States (“HTSUS”), as a “part” of a motor vehicle seat. We have reviewed NY N004869 and found it to be in error. For the reasons set forth below, we hereby revoke NY N004869.

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, 2186 (1993), notice of the proposed modification was published on October 9, 2008, in the Customs Bulletin, Volume 42, No. 12. Five comments were received in response to this notice and are addressed in this ruling.

**FACTS:**

In NY N004869, we described the merchandise as follows:

The submitted sample is a seat heater assembly for automobiles, Part Number SP 4729K. The item is not a seat but rather a pad that is installed into the seat itself. It is composed of insulated resistance wires that lie on top of a polyester base cloth. The wire itself is composed of copper alloy, the insulation is fluorine, and the wiring is adhered to the base cloth which is polyethylene. Power to the wiring is provided by the product’s polyvinylchloride (PVC) harness, which is plugged into an outlet in the automobile. The product is to be installed underneath the trim cover of automobile seats at your customer’s production plants.

**ISSUE:**

What is the correct tariff classification of the seat heater assembly for automobiles under the HTSUS?

**LAW AND ANALYSIS:**

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (“GRIs”). GRI 1 provides, in part, that the classification of goods shall be determined according to 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 otherwise require, GRIs 2 through 6 may then be applied, in order.

When interpreting and implementing the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) should be consulted. The ENs, although not dispositive nor legally binding, provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hair-dressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:
8516.80	Electric heating resistors:
8516.80.80	Other . . .
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
8543.70	Other machines and apparatus: Other: Other:
8543.70.96	Other . . .
9401	Seats (other than those of heading 9402), whether or not convertible into beds, and parts thereof:
9401.90	Parts:
9401.90.10	Of seats of a kind used in motor vehicles . . .

In the proposed ruling published in the *Customs Bulletin* (Vol. 42, No. 12, October 9, 2008), CBP concluded that the seat heater assembly in NY N004869 was incorrectly classified under heading 9401, HTSUS, as a “part” of a motor vehicle seat because “whether or not the seat heater is applied to its specific use, the car seat still functions as a car seat.” As explained in the proposed ruling, our position was based on *United States v. Pompeo*, 43 C.C.P.A. 9, 14 (1955) (hereinafter “*Pompeo*”), in which the court held that an article is a “part” if it is dedicated solely for use upon another article and, once installed, is integral to the functioning of the article to which it is joined. CBP proposed classification under heading 8543, HTSUS, which provides for “[e]lectrical machines and apparatus, not specified or included elsewhere, in [Chapter 85].”

In one of the comments received, it was pointed out that in Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States, 110 F.3d 774 (Fed. Cir. 1997) (hereinafter “Bauerhin”), the court considered the nature of “parts” under the HTSUS and two distinct though not inconsistent tests resulted. See Bauerhin, 110 F.3d at 779 (citing United States v. Willoughby Camera Stores, Inc., 21 C.C.P.A. 322 (1933) and United States v. Pompeo, 43 C.C.P.A. 9 (1955)). The court in Bauerhin explained:

As set forth in Willoughby Camera, “an integral, constituent, or component part, without which the article to which it is to be joined could not function as such article” is surely a part for classification purposes. 221 C.C.P.A. at 324. However that test is not exclusive. Willoughby Camera does not address the situation where an imported item is dedicated solely for use with the article. Pompeo addresses that scenario and states that such an item can also be classified as a part.

Reconciling Willoughby Camera with Pompeo, we conclude that where, as here, an imported item is dedicated solely for use with another article and is not a separate and distinct commercial entity, Pompeo is a closer precedent and Willoughby Camera does not apply [ . . . ] Under Pompeo, an imported item dedicated solely for use with another article is a “part” of that article within the meaning of the HTSUS.

On the basis of the court’s definition of the term “part” in Bauerhin, cited above, commenter argued that the seat heating assembly is properly classified under heading 9401, HTSUS, as a “part” because it is dedicated solely for use with the motor vehicle seat, and is neither designed nor sold to be used independently. He submitted that it is irrelevant that the car seat may still function as a seat whether or not the seat heater is applied to its specific use.

On further review of Bauerhin, we find this analysis to be persuasive. However, under Additional U.S. Rule of Interpretation 1(c), HTSUS, “a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for ‘parts’ or ‘parts and accessories’ shall not prevail over a specific provision for such part or accessory.” Accordingly, although the seat heater is a part of a car seat, a specific provision for this part will prevail.

The other four comments received agreed with CBP that heading 9401, HTSUS, was the incorrect classification for the seat heater assemblies. However, the commenters disagreed with the heading proposed by CBP (8543, HTSUS) and argued that the seat heater assembly should be classified in heading 8516, HTSUS, which provides, in relevant part, for “electrical heating resistors.”

The term “resistor” is not defined in the tariff or in the legal notes. When a tariff term is not defined by the HTSUS or the legislative history, its correct meaning is its common, or commercial, meaning. See Rocknel Fastener, Inc. v. United States, 267 F.3d 1354, 1356 (Fed. Cir. 2001). “To ascertain the common meaning of a term, a court may consult ‘dictionaries, scientific authorities, and other reliable information sources’ and ‘lexicographic and other materials.’” *Id.* (quoting C.J. Tower & Sons of Buffalo, Inc. v. United States, 673 F.2d 1268, 1271, 69 C.C.P.A. 128 (C.C.P.A. 1982); Simod Am. Corp. v. United States, 872 F.2d 1572, 1576 (Fed. Cir. 1989)). In addition, the Explanatory Notes of the Harmonized Commodity Description and Coding System (“ENs”) while not binding law, offer guidance as to how tariff terms

are to be interpreted. See *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003) (noting that Explanatory Notes are “intended to clarify the scope of HTSUS subheadings and to offer guidance in their interpretation”).

The *Oxford English Dictionary* ([www.oed.com](http://www.oed.com)) defines the term “resistor” as “a passive device which impedes the flow of electric current, used to develop a voltage drop across itself or to limit current flow.” *Merriam-Webster’s Dictionary* ([www.merriam-webster.com](http://www.merriam-webster.com)) defines “resistor” as “a device that has electrical resistance and that is used in an electric circuit for protection, operation, or current control.” *The American Heritage Dictionary* (4<sup>th</sup> ed. 2000) defines a “resistor” as “an electric circuit element used to provide resistance.” Based on the above definitions, we conclude that a “resistor” is a device that limits the flow of electric current in an electrical circuit.

In addition, the ENs to heading 8516 state, in relevant part:

(F) ELECTRIC HEATING RESISTORS

With the **exception** of those of carbon (**heading 85.45**), all electrical resistors are classified here, irrespective of the classification of the apparatus or equipment in which they are to be used.

They consist of bars, rods, plates, etc., or lengths of wire (usually coiled), or special material which becomes very hot when current is passed through it. The material used varies (special alloys, compositions based on silicon carbide, etc.) . . .

Wire resistors are usually mounted on insulating formers (e.g., of ceramics, steatite, mica or plastics) or on soft insulating core (e.g., of glass fibres or asbestos) . . .

Resistors remain classified here even if specialized for a particular machine or apparatus . . .

The instant seat heating assembly provides heat to the automotive seat through electrical resistance. The alloy wiring “resists” the flow of electric current provided by the automobile’s electric source and dissipates the resulting heat throughout the pad. In addition, it is not made of carbon. Accordingly, by application of GRI 1 and U.S. Additional Rule of Interpretation 1(c), HTSUS, we find the merchandise to be an “electric heating resistor,” classified under heading 8516, HTSUS. Our conclusion is in keeping with the ENs to heading 8516, which describe the electric heating resistors of the heading as “consist[ing] of . . . lengths of wire . . . usually mounted on soft insulating core.” We note, finally, that classification of the seat heating assembly under heading 8543, HTSUS, is precluded by the terms of that heading because it is provided for in heading 8516, HTSUS. CBP has previously classified a substantially similar electric heating element used in the seat of an automobile under heading 8516, HTSUS. See NY D84978, dated December 17, 1998.

**HOLDING:**

By application of GRI 1 and Additional U.S. Rule of Interpretation 1(c), the seat heater assembly for automobiles is classified under heading 8516, specifically in subheading 8516.80.80, HTSUS, which provides, in relevant part, for: “[E]lectric heating resistors, other than those of heading 8545; parts thereof: Electric heating resistors: Other.” The 2008 column one, general rate of duty is Free.

Duty rates are provided for convenience only and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY N004869, dated January 24, 2007, is hereby revoked. In accordance with 19 U.S.C. § 1625(c), this action will become effective 60 days after publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

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**PROPOSED REVOCATION OF A RULING LETTER AND  
PROPOSED REVOCATION OF TREATMENT RELATING TO  
THE COUNTRY OF ORIGIN MARKING OF A BAG OF  
BAGEL CRISPS**

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

**ACTION:** Notice of proposed revocation of a ruling letter and proposed revocation of treatment relating to the country of origin marking of a bag of bagel crisps.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to revoke a ruling letter relating to the country of origin marking of a bag of bagel crisps. CBP also 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 February 14, 2009.

**ADDRESS:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial Trade and Regulations Branch, 799 9th Street N.W., Washington, D.C., 20229. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118 during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Richard Mojica, Tariff Classification and Marking Branch, at (202) 325-0032.

**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, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the country of origin marking of a bag of bagel crisps. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter (HQ) H009022, dated June 28, 2007 (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., a 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.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke HQ H009022 and any other ruling not specifically identified, to reflect the proper country of origin marking of the subject merchandise according to the analysis contained in proposed Headquarters Ruling Letter H016234, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

**DATED:** December 30, 2008

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
HQ H009022  
June 28, 2007  
OT:RR:CTF:TCM H009022 ARM  
CATEGORY: Marking

JESSICA T. DEPINTO  
HODES, KEATING & PILON  
134 North LaSalle Street, Suite 1300  
Chicago, IL 60602

RE: Country of Origin Marking – Bagel Crisps

DEAR MS. DEPINTO:

This is in response to your submissions of February 27, 2007, and April 9, 2007, on behalf of Nonni's Food Company Inc., regarding the country of origin marking of its line of bagel crisps sold under the "New York Style Brand" trademark.

FACTS:

The merchandise, New York Style Brand® Bagel Crisps®, are crisp, twice-baked snack foods resembling a thinly sliced bagel, put up for retail sale in laminated paper bag, folded so as to resemble a paper lunch bag in size and shape, holding 6 ounces, net weight. The entire bag contains a graphic of a map of New York City, with place names such as Manhattan, Hudson River, New York City Harbor, Queens and Long Island, visible on all four panels on the bag. A picture of the bagel crisps appears around the bottom of the four sides of the bag. Each side of the bag contains an informational panel that overlays the map graphic. On the front panel of the bag appears the New York Style Brand registered trademark, the variety of Bagel Crisps contained within the package, the net weight of the package, and a symbol of kosher certification.

On the back panel of the package, the New York Style Brand trademark is reproduced, approximately one-half the size of the mark on the front panel, below which is a body of text information about the Bagel Crisps. Included in the text is the statement that the snack offers “the same delightful taste as the items found in New York City’s traditional neighborhood bakeries.”

One side panel contains the required U.S. Food and Drug Administration “Nutrition Facts” information, a statement of the ingredients, an allergy warning, and the following information regarding the distributor: “New York Style Brand, 8 Nicholas Court, Dayton, NJ 08810 . . .” a web address and a toll free number for “questions or comments from consumers within the United States.”

The other side panel contains another block of “Nutrition Information” a listing of ingredients, an allergy warning, a statement “imported and Distributed Outside the United States by,” followed by the names and addresses for two distributors, one in Australia and another in New Zealand, and the words “Made in Bulgaria” in upper case letters approximately the same size type as the names of the outside U.S. distributors. Additionally, the side panel contains the words “best before” to be marked with a freshness date, the UPC symbol and the flavor of the Bagel Crisps in the package.

#### ISSUE:

Does the proposed marking of the package of Bagel Crisps® satisfy the country of origin marking requirements?

#### LAW AND ANALYSIS:

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 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. Congressional intent in enacting 19 U.S.C. 1304 was “that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is 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.” *United States v. Friedlaender & Co.*, 27 C.C.P.A. 297, 302 (1940). Part 134 of the Customs Regulations implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.41(b) of the Customs Regulations (19 CFR §134.41(b)), mandates that the ultimate purchaser in the United States must be able to find the marking easily and read it without strain.

Of concern here are the requirements of two related provisions of the marking regulations, section 134.46, Customs Regulations (19 CFR §134.46) and section 134.47, Customs Regulations (19 CFR §134.47). Sec. 134.46 Marking when name of country or locality other than country of origin appears. In any case in which the words “United States,” or “American,” the letters “U.S.A.,” any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to

the actual country of origin of the article, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by "Made in," "Product of," or other words of similar meaning.

Sec. 134.47 Souvenirs and articles marked with trademarks or trade names. When as part of a trademark or trade name or as part of a souvenir marking, the name of a location in the United States or "United States" or "America" appear, the article shall be legibly, conspicuously, and permanently marked to indicate the name of the country of origin of the article preceded by "Made in," "Product of," or other similar words, in close proximity or in some other conspicuous location.

The purpose of both provisions is the same, namely to prevent the ultimate purchaser from being misled or deceived when the name of a country or place other than the country of origin appears on an imported article or its container. The critical difference between the two provisions is that section 134.46 requires that the name of the actual country of origin appear "in close proximity" to the U.S. reference and in lettering of at least comparable size. CBP has ruled that in order to satisfy the close proximity requirement, the country of origin marking must appear on the same side(s) or surface(s) in which the name of the locality other than the country of origin appears. See HRL 708994, dated April 24, 1978. The more restrictive requirements of section 134.46 are designed to alleviate the possibility of misleading an ultimate purchaser with regard to the country of origin of an imported article, if such article or its container includes language which may suggest a U.S. origin (or other foreign locality not the correct country of origin).

By contrast, section 134.47 is less stringent, providing that when as part of a trade name, trademark or as part of a souvenir marking, the name of a location in the U.S. or "United States" or "America" appears on the imported article, the name of the country of origin must appear in close proximity or "in some other conspicuous location." In such circumstance, no comparable size requirement exists. In other words, the latter provision triggers only a general standard of conspicuousness. In either case, the name of the country of origin must be preceded by "Made in", "Product of", or other similar words.

There are three situations we must consider in this case: (1) references displayed in connection with a trade name; (2) references provided in connection with promoting the product; and (3) references to a U.S. address provided in connection with distribution information. You claim that only section 134.47 is applicable to all of these situations and that the single "Made in Bulgaria" reference on a side panel of the package satisfies that requirements of that provision. For the reasons set forth below, we disagree.

With regard to the first situation, the front and back panels contain the registered trademark name. We agree that the registered trademark name appearing alone on a particular panel, as it did in Headquarters Ruling (HQ)734245, dated February 18, 1992, would only trigger the requirements of section 134.47, that the package be marked with the country of origin in a conspicuous location. You argue that, for the instant merchandise, the side panel containing the "best by . . ." date is a conspicuous location.

We find your argument unpersuasive. For instance, in your April 9, 2007 submission, you claim that in HQ 734245, CBP held that the words "Made in China" printed in lettering approximately 1/8 inch tall on the bottom of a box containing a toy car satisfied the requirements of section 134.47 because

the marking was easily found and read without strain which made the five other references to the “American Muscle” trademark acceptable. CBP did no such thing. In that case, the ruling referred to a revised sample where the words “Made in China” were printed on the front of the package below the cellophane display window, in the lower right hand corner of the package’s front panel in white lettering approximately ½ inch high against a black background. It was this significantly larger and more prominent proposed marking that satisfied the provisions of Section 134.47.

You also cite HQ 558638, dated November 18, 1994, wherein CBP found that the trademark “U.S. Gauge” printed in approximately 8 point type on the bottom of the front and back panels of a box triggers the marking requirements of section 134.47. CBP found that the words “Made in China” printed in 6 point type on the top flap of the box along with all of the other product information satisfied the conspicuous requirement. The circumstances of HQ 558638 are completely dissimilar to those of the instant case. First, a box containing a gauge is about half the size of the instant package. The boxes there were fairly plain and mostly white. The trademark name and origin information were printed in close to the same size type. Here, the trademark name printed on the front and back sides of the bag is in type far larger than that used for the origin marking on the side panel and the trademark name is printed amidst many other references to New York City.

Furthermore, you argue that the instant case is not analogous to that found in HQ 735085, dated June 4, 1993, where CBP counted at least twenty references to America or to a U.S. location on a sixteen-ounce bag of frozen vegetables. You state that CBP did not require the origin marking to appear in all twenty locations, but only on the front and back of the package. We note that a bag of vegetables would only have a front and back panel. Hence, the origin information was required for all sides of the package. Here, there are at least ten non-origin references on a six-ounce bag of bagel crisps. For instance, the front panel contains a graphic of a map of Manhattan with the name of that borough printed in large capital letters. “Hudson River” and “New York City Harbor” can also be seen on the front of the bag. The back panel contains text describing the product in relation to “New York City’s traditional neighborhood bakeries.” When opened, the bag displays the word “Queens” in the background map graphic. The instant package is about one third the size of the bag of vegetables and contains about one half the number of non-origin references. CBP considers these cases analogous. As such, even under section 134.47, in order to meet the “conspicuousness” requirement, both front and back panels must be marked with the country of origin preceded by the words “Made in . . .”, “Product of . . .” or other similar construction. The marking should be as relatively conspicuous in color and size as the trademark itself in accordance with HQ 734245.

With regard to the third situation, references to a U.S. address provided in connection with distribution information, you claim that the New Jersey, Australia, and New Zealand distributor addresses do not trigger the requirements of section 134.46 because it is highly unlikely to mislead or deceive the ultimate purchaser into believing that the product originates from the U.S., Australia or New Zealand. Yet, T.D. 97-92 specifically states “CBP agrees that references to the U.S. made in the context of a statement relating to any aspect of the production or distribution of the products, such as . . . ‘Distributed by ABC Inc., Colorado, U.S.A.’, are misleading to the ultimate purchaser and would still require country of origin marking in accor-

dance with section 134.46, even as amended by the proposal.” The issuance of T.D. 97–92 did not change the longstanding policy of CBP to apply the requirements of section 134.46 to distribution information. (See Headquarters Rulings 734790, dated October 22, 1992 and 560210, January 24, 1997.) Therefore, the distribution information on both side panels of the package must be accompanied by origin information in lettering of at least comparable size, in accordance with the provisions of section 136.46. We note that the side panel of the sample with the foreign distribution information already complies with these provisions.

**HOLDING:**

Due to the large number of references to non-origin localities contained on the six-ounce package of bagel crisps, both the front and back sides of the laminated paper bag package must be marked with the country of origin, in accordance with section 134.47. Additionally, the distribution information on the side panels containing references to non-origin US and foreign localities on the bagel crisps package triggers the requirements of 19 CFR section 134.46. Furthermore, the country of origin must be preceded by “Made in,” “Product of” or other similar words on each side of the package. We note that one side panel of the sample already complies with this ruling.

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 handling the transactions.

GAIL HAMILL,  
*Chief,*

*Tariff Classification and Marking Branch.*

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.  
U.S. CUSTOMS AND BORDER PROTECTION,  
**HQ H016234**  
**CLA-2 OT: RR: CTF: TCM H016234 RM**  
**CATEGORY: Marking**

MICHAEL HODES, ESQ.  
HODES, KEATING & PILON  
134 North LaSalle Street, Suite # 1300  
Chicago, IL 60602

**RE:** Revocation of HQ H009022; Country of Origin Marking of Bagel Crisps

DEAR MR. HODES:

This letter is in response to your August 21, 2007 request for reconsideration of Headquarters Ruling Letter (“HQ”) H009022, dated June 28, 2007, on behalf of Nonni’s Food Company Inc, regarding the country of origin marking of the New York Style® Bagel Crisps®.

**FACTS:**

New York Style Brand® Bagel Crisps® (hereinafter “Bagel Crisps”) are crisp, twice-baked snack foods resembling a thinly sliced bagel, packaged in

a laminated paper bag that holds up to 6 ounces by net weight. The bag features a map of New York City over a green background that includes the words “Manhattan,” “Hudson River,” “New York City Harbor,” “Queens,” and “Long Island,” in black lettering ranging in size from approximately 6 point to 12 point font. A picture of the Bagel Crisps appears around the bottom of the four sides of the bag. Each side contains an informational panel that overlays the map graphic.

The front panel displays the product’s trademark, which consists of the words “New York Style Brand®,” in approximately 16 point font, printed on a banner that is superimposed over a graphic of a skyline and a rising sun. The trademark is reproduced in approximately one-half the size on the back panel, above a body of text information about the Bagel Crisps. Included in the text is the statement: “This naturally wholesome snack captures the same delightful taste as the items found in New York City’s traditional neighborhood bakeries.”

One side panel contains the required U.S. Food and Drug Administration “Nutrition Facts” information, a listing of ingredients, an allergy warning, the name and address of a U.S. distributor, and a web address and a toll free number for questions or comments from consumers within the United States. The other side panel contains another block of “Nutrition Information,” the “best before” date, a listing of ingredients, an allergy warning, and the names and addresses of two foreign distributors, one in Australia and another in New Zealand. As initially presented, the product was marked on that side panel with its country of origin, “MADE IN BULGARIA,” in black, upper-case lettering of approximately 8 point font, over a cream-colored background, below the names and addresses of the foreign distributors and above the “best before” date.

In HQ H009022, U.S. Customs and Border Protection (“CBP”) determined that the front, back, and two side panels of the bag must be marked to comply with the requirements of 19 CFR § 134.46 and § 134.47. The importer has since revised the packaging. The product is now marked with its country of origin on both side panels, in black, upper-case lettering of approximately 8 point font, over a cream-colored background. The words “MADE IN BULGARIA” appear directly below the names and addresses of U.S. distributors and directly above the “best before” date on one side, and on the U.S. nutrition label on the other. The origin marks are approximately the same size font as the names and addresses of the foreign distributors. The front and back remain unmarked.

**ISSUE:**

Does the revised marking of the package of Bagel Crisps satisfy the country of origin marking requirements?

**LAW AND ANALYSIS:**

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 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. Congressional intent in enacting 19 U.S.C. § 1304 was “that the ultimate purchaser should be able to know by an inspection of the marking on imported goods the country of which the goods is 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. Friedlander & Co., 27 C.C.P.A. 297, 302 (C.C.P.A. 1940). Part 134 of the Customs Regulations implements the country of origin marking requirements and exceptions to 19 U.S.C. §1304. Section 134.41(b) of the Customs Regulations (19 CFR § 134.41(b)), mandates that the ultimate purchaser in the United States must be able to find the marking easily and read it without strain.

Of concern here are the requirements of two related provisions of the marking regulations, 19 CFR §§ 134.46 and 134.47.

19 CFR § 134.46 states:

In any case in which the words “United States,” or “American,” the letters “U.S.A.,” any variation of such words or letters, or the name of any city or location in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear legibly and permanently in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by “Made in,” “Product of,” or other words of similar meaning.

19 CFR § 134.47 states:

When as part of a trademark or trade name or as part of a souvenir marking, the name of a location in the United States or “United States” or “America” appear, the article shall be legibly, conspicuously, and permanently marked to indicate the name of the country of origin of the article preceded by “Made in,” “Product of,” or other similar words, in close proximity or in some other conspicuous location.

The purpose of both provisions is the same, namely to prevent the ultimate purchaser from being misled or deceived when the name of a country or place other than the country of origin appears on an imported article or its container. The critical difference between the two provisions is that 19 CFR § 134.46 requires that the name of the actual country of origin appear “in close proximity” to the U.S. reference and in lettering of at least comparable size. CBP has ruled that in order to satisfy the close proximity requirement, the country of origin marking must appear on the same side(s) or surface(s) on which the name of the locality other than the country of origin appears. See HQ 734164, dated September 23, 1991 (holding that country of origin marking of a book must be on the side or surface containing a non-origin reference). The more restrictive requirements of 19 CFR § 134.46 are designed to alleviate the possibility of misleading an ultimate purchaser with regard to the country of origin of an imported article, if such article or its container includes language which may suggest a U.S. origin (or other foreign locality not the correct country of origin).

By contrast, 19 CFR § 134.47 is less stringent, providing that when as part of a trade name, trademark, or as part of a souvenir marking, the name of a location in the U.S. or “United States” or “America” appears on the imported article, the name of the country of origin must appear in close proximity or “in some other conspicuous location.” In such circumstance, no comparable size requirement exists. In other words, the latter provision triggers

only a general standard of conspicuousness. In either case, the name of the country of origin must be preceded by “Made in,” “Product of,” or other similar words.

At issue in this case is whether the revised package complies with the marking requirements with respect to: (1) non-origin references appearing in connection with the trademark; (2) non-origin references appearing in connection with distribution information; and (3) other non-origin references.

### **I. Non-Origin References in Connection with the Trademark**

The front panel of the Bagel Crisps package displays the product’s trademark, which consists of the words “New York Style Brand®,” in approximately 16 point font, printed on a banner that is superimposed over a graphic of a skyline and a rising sun. The trademark is also displayed on the back panel in about half the size. Previously, in HQ H009022, dated June 28, 2007, addressing the non-origin references that are part of the product’s trademark, CBP determined that, “even under section 19 CFR § 134.47, in order to meet the ‘conspicuousness’ requirement, both the front and back panels must be marked with the country of origin preceded by the words “Made in . . .”, “Product of . . .” or other similar construction . . . as relatively conspicuous in color and size as the trademark itself.” CBP cited HQ 735085, dated June 4, 1993, as containing a factually similar scenario.

HQ 735085 discussed the country of origin marking requirements for a 16 ounce bag of frozen vegetables bearing the words “American Mixtures,” a registered trademark, at the top and bottom of the front side, in 63 and 36 point font, respectively. Beneath the trademark, and depending on the contents of the product, the words “Manhattan,” “San Francisco,” or “California” were printed in approximately 27 point font, followed by the word “Style” in approximately 9 point font. On the back of the package, the location name (e.g., “San Francisco”) appeared in approximately 18 point font and in 4 other locations, in approximately 6 point font. The words “American Mixtures” appeared again on the back side, in approximately 6 point font, in 3 locations. Also on the back side, the product was marked with its country of origin, “PRODUCT OF MEXICO,” in black ink lettering of approximately 6 point font, over a dark green background, and as the fifth out of six lines in a block of text indicating ingredients, distribution information, and dietary fiber content. In total, CBP counted at least 20 non-origin references. There, we found that, per 19 CFR § 134.47, “the prominence of the ‘American Mixtures’ name [was] such, that the country of origin marking was not conspicuous unless it appear[ed] on the front side of the retail package.” Upon review, we now find HQ 735085 to be distinguishable from the instant case.

Our rulings have followed the principle that, in determining if a marking is “conspicuous” for purposes of 19 CFR § 134.47, it is necessary to consider the context in which it appears. See HQ 735085. For example, in HQ 562481, dated October 28, 2002, we determined that cigarette cartons bearing the trademark “United King Size American Blend” on the front and back side, and marked with the country of origin in contrasting ink on the lower left corner of a side panel, satisfied the requirements of 19 CFR § 134.47 because “the marking is separated from the other product information in such a way that it may easily be located and read by a potential purchaser.” Likewise, in HQ 559748, dated June 12, 1996, we held that a wooden box of cigars containing the trademark “Zino Relax Sumatra” on the top, front, and

two side panels, and marked with the country of origin on the bottom panel, was marked in a conspicuous location because “an ultimate purchaser may easily manipulate the cigar box to reveal the . . . country of origin marking . . .”

We note that in HQ 735085, CBP required that a bag of vegetables be marked in an “unusual” location, i.e., on all panels, and not only on the back side of the bag, as previously authorized under HQ 731830, dated November 21, 1988, because the country of origin mark was difficult to discern and it was surrounded by 20 non-origin references. Conversely, in this case, the product is marked with its country of origin in a place where the ultimate purchaser can notice from a casual inspection and is likely to consult, i.e., next to the nutritional information on one side panel and the “best before” freshness date on the other. The markings are easily distinguishable from the surrounding material because they appear in contrasting black lettering over a cream color background, in upper case font, and in a size comparable to that of the foreign distributors’ information. Based on the foregoing, we find that the revised package of Bagel Crisps is marked in a conspicuous location as required by 19 CFR § 134.47.

## **II. Non-Origin References in Connection to Distribution Information**

The bag of Bagel Crisps contains the name and address of a U.S. distributor in approximately 8 point font on one side panel, and the names and addresses of distributors in Australia and New Zealand in approximately 8 point font on the other. CBP applies the requirements of 19 CFR § 134.46 to distribution information containing non-origin references. See T.D. 97-72, dated August 20, 1997 (“CBP agrees that [non-origin] references made in the context of a statement relating to any aspect of production or distribution of products . . . are misleading to the ultimate purchaser . . . and would still require the country of origin marking in accordance with section 134.46 . . .”). Therefore, the country of origin marking must appear in close proximity to the non-origin references, and in lettering of at least a comparable size. The revised package is marked with the country of origin on both side panels in upper case lettering of approximately 8 point font, a size comparable to that of the non-origin distribution information. We find this marking to be in compliance with the requirements of 19 CFR § 134.46.

## **III. Other Non-Origin References**

The bag of Bagel Crisps contains other non-origin references, specifically, a map of New York City that underlies the package and displays the words “Manhattan,” “Hudson River,” “New York City Harbor,” “Queens,” and “Long Island,” and the phrase “[T]his naturally wholesome snack captures the same delightful taste as the items found in New York City’s traditional bakeries . . .” on the back panel. You submit that these non-origin references do not trigger the requirements of 19 CFR § 134.46 because they are decorative and are not likely to mislead or deceive the ultimate purchaser as to the origin of the goods.

CBP has consistently ruled that non-origin geographical references on imported articles do not trigger the requirements of 19 CFR § 134.46 if they appear in a context that is not likely to confuse the ultimate purchaser as the product’s country of origin. For example, in HQ 559712, dated July 11, 1996, we ruled that the word “Arizona” embroidered on the front right chest of a woman’s imported pullover did not trigger the special marking require-

ments of 19 CFR § 134.46 because the word “Arizona” “is used as a decoration of the shirt” and “would not reasonably be construed to indicate the country of origin of the article.” Similarly, in HQ 732412, dated August 29, 1989, we found that the placement of the word “Kansas” on different parts of imported jeans was “built into the garment’s design” and “would not mislead or deceive the ultimate purchaser or in any way connote that ‘Kansas’ is the place of manufacture.” Likewise, in HQ 734562, dated August 12, 1992, we found that an imported nylon soccer bag that contained the words “Charleston, MA” printed on the fabric label and the phrases “USA 94” printed on the top, “USA Umbro 1994” printed on the side panels, and “94 to America” printed on the bottom of the bag, did not trigger 19 CFR § 134.46 because “such marking was used as a symbol or decoration and would not be reasonably construed as indicating the country of origin of the article.”

Similarly, in this case, we find that the non-origin references on the Bagel Crisps package are part of the marketing concept associated with the product’s brand, “New York Style Brand®,” and would not likely mislead or deceive the ultimate purchaser as to the origin of the product. To wit, except for the word “Manhattan,” the locations named on the map that underlies the package are not easily discernable. The words “Hudson River” are mostly obscured by the crease in the packaging. “Queens” can only be read if one opens the package. “Long Island” is obstructed by the U.S. nutritional facts label on the side panel. “New York City Harbor” is printed in a faint and very small font. Moreover, the phrase “captures the same delightful taste as the items found in New York City’s traditional bakeries” does not suggest origin. It is a figure of speech. Taken together, and considering that the country of origin marking is displayed in a conspicuous location on the package, we conclude that 19 CFR § 134.46 is not triggered.

**HOLDING:**

On the basis of the information and samples submitted, we find that the revised Bagel Crisps package satisfies the marking requirements of 19 CFR § 134.46 and 19 CFR § 134.47.

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 handling the transactions.

**EFFECT ON OTHER RULINGS:**

This ruling revokes HQ H009022, dated June 28, 2007.

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

**PROPOSED REVOCATION OF A RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
CLASSIFICATION OF A RF POWER AMPLIFIER**

**AGENCY:** United States Customs and Border Protection; Department of Homeland Security.

**ACTION:** Proposed modification of a classification ruling letter and revocation of treatment relating to the classification of a RF power amplifier.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that Customs and Border Protection (CBP) is proposing to revoke one ruling letter relating to the classification of a RF power amplifier. CBP is also proposing to revoke any treatment previously accorded by it to substantially identical merchandise.

**DATE:** Comments must be received on or before February 14, 2009.

**ADDRESS:** Written comments are to be addressed to the U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 799 9th Street N.W., Washington, D.C. 20229. Submitted comments may be inspected at the offices of Customs and Border Protection, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325-0118.

**FOR FURTHER INFORMATION CONTACT:** Kelly Herman, Tariff Classification and Marking Branch: (202) 325-0026.

**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 responsibil-

ity 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, this notice advises interested parties that CBP is proposing to revoke one ruling letter pertaining to the classification of a RF power amplifier. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) R04974, dated October 23, 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 ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the 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 is proposing 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 R04974, a RF power amplifier was classified in heading 8543, of the Harmonized Tariff Schedule of the United States ("HTSUS"), which provides for: "Electric machines or apparatus, having individual functions, not specified or included elsewhere [in Chapter 85]." Since the issuance of that ruling, CBP has reviewed the classification of the RF power amplifier and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to revoke NY R04974 and revoke or modify any other ruling not specifically identified, to reflect the classification of the RF power amplifier according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H004105, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially

identical transactions. Before taking this action, we will give consideration to any written comments timely received.

**DATED:** January 5, 2009

Gail A. Hamill for MYLES B. HARMON,  
*Director,*  
*Commercial and Trade Facilitation Division.*

Attachments



[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,  
U.S. CUSTOMS AND BORDER PROTECTION,  
NY R04974  
October 23, 2006  
CLA-2-85:RR:E:NC:N1:112 R04974  
CATEGORY: Classification  
TARIFF NO.: 8543.89.9760

CRAIG L. PETTIT  
IMPORT/EXPORT COMPLIANCE MANAGER,  
RF MICRO DEVICES  
7628 Thorndike Road  
Greensboro, NC 27409-9421

RE: The tariff classification of a electricity amplifier from an unidentified country

DEAR MR. PETTIT,

In your letter dated September 26, 2006, you requested a tariff classification ruling.

The item concerned is the RFMD Power Amplifier (# RF3146). It is an integrated circuit which amplifies the electric signals from a cellular radio transceiver before they are broadcast from its antenna.

The applicable classification subheading for the RFMD Power Amplifier (# RF3146) will be 8543.89.9760, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "Electrical . . . apparatus, having individual functions, not specified or included elsewhere . . . : Other . . . apparatus: Other: Other: Other: Other: Amplifiers". The rate of duty will be 2.6%.

Duty rates are provided for your convenience and are subject to change. The text of the most recent Harmonized Tariff Schedule and the accompanying duty rates are provided on the World Wide Web at <http://www.usitc.gov/tata/hts/>.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

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 im-

ported. If you have any questions regarding the ruling, contact National Import Specialist Richard Laman at 646-733-3017.

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

[ATTACHMENT B]

HQ H004105  
CLA-2 OT:RR:CTF:TCM H004105 KSH  
CATEGORY: Classification  
TARIFF NO.: 8517.62.0050

MYRON P. BARLOW, ESQ.  
BARLOW & ASSOCIATES  
312 Third Street  
Annapolis, MD 21403

RE: Revocation of NY R04974, dated October 23, 2006; Classification of a Mobile RF Amplifier Module

DEAR MR. BARLOW:

This is in response to your letter, dated November 17, 2006, on behalf of your client, RF Micro Devices, Inc., concerning the classification of an RF (radio frequency) power amplifier module under the Harmonized Tariff Schedule of the United States ("HTSUS"). You have requested reconsideration of New York Ruling Letter ("NY") R04974, dated October 23, 2006, in which the National Commodity Specialist Division of U.S. Customs and Border Protection (CBP) classified the RF power amplifier module in subheading 8543.89.92, HTSUS, as an electric machine or apparatus, having individual functions, not specified or included elsewhere in Chapter 85. The applicable text to subheading 8543.89.92, HTSUS, has been moved to subheading 8543.70, HTSUS, effective February 3, 2007.

You contend that the RF power amplifier module is provided for in heading 8529.90.99, HTSUS, as other apparatus for the transmission or reception of voice, images or other data. Prior to 2007, cellular phone amplifiers were classified in heading 8525, HTSUS or heading 8529, HTSUS. See HQ 962909, dated May 20, 2000. Pursuant to title 19 United States Code, Section 3005, the HTSUS was amended to reflect changes recommended by the World Customs Organization. The proclaimed changes are effective for goods entered or withdrawn from warehouse for consumption on or after February 3, 2007. See Presidential Proclamation 8097, 72 FR 453, Volume 72, No. 2 (January 4, 2007). Cellular phones and parts thereof of headings 8525, HTSUS, and 8529, HTSUS, were transferred to heading 8517, HTSUS (2007).

We have reviewed NY R04974 and participated in a telephone conference with you and a member of my staff. We have determined that NY R04974 is in error.

FACTS:

The merchandise at issue is a mobile handset RF power amplifier module, identified as part number RF3146 (RF3146). It is designed to be installed into Global System for Mobile Communications (GSM) cellular phones. You state the RF3146 is sold to GSM cellular phone manufacturers and is incor-

porated into the cellular phone during the manufacturing process. You also explain that the RF3146 is necessary for the functioning of the cellular phones as the phones cannot operate without it. See [www.rfmd.com](http://www.rfmd.com). The RF3146 amplifies four radio frequency bands, provides integrated power control circuitry, selects the proper band to transmit the signal and filters the amplified signal to remove unwanted energy.

The RF3146 contains a silicon CMOS and two Gallium Arsenide chips and is comprised of a printed circuit board, two resistors and three connectors. It is packaged in a 7x7mm Lead Frame Module™ packaging technology. You state that the packaging technology allows RF Micro Devices, Inc., to manufacture extremely small units to better fit a cellular phone.

ISSUE:

Whether the RF3146 is classified in heading 8517, HTSUS, as an other apparatus for the transmission or reception of voice, images or other data, or in heading 8543, HTSUS, as an electric machine or apparatus, having individual functions, not specified or included elsewhere in Chapter 85.

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 2008 HTSUS provisions under consideration are as follows:

8517 Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof:

\* \* \*

Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):

\* \* \*

8517.62.00 Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: . . . .

\* \* \*

8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter, parts thereof:

\* \* \*

8543.70 Other machines and apparatus:

\* \* \*

Other:

\* \* \*

Other:

\* \* \*

8543.70.96 Other . . . . .

The Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) constitute the official interpretation of the HTSUS at the international level. 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, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 8517 covers electrical apparatus for the transmission or reception of data between two points, regardless of the type of signal (i.e., analog or digital) or distance transmitted. EN 85.17 states, in pertinent part, the following:

This heading covers apparatus for the transmission or reception of speech or other sounds, images or other data between two points by variation of an electric current or optical wave flowing in a wired network or by electromagnetic waves in a wireless network. The signal may be analogue or digital. The networks, which may be interconnected, include telephony, telegraphy, radio-telephony, radio-telegraphy, local and wide area networks.

\* \* \*

**(D) Apparatus for telegraphic communication other than facsimile machines of heading 84.43.**

These apparatus are essentially designed for converting characters, graphics, images or other data into appropriate electrical impulses, for transmitting those impulses, and at the receiving end, receiving these impulses and converting them either into conventional symbols or indications representing the characters, graphics, images or other data or into the characters, graphics, images or other data themselves.

\* \* \*

The EN to heading 8543, HTSUS, provides in relevant part, the following:

This heading covers all electrical appliances and apparatus, **not falling** in any other heading of this Chapter, **nor covered more specifically** by a heading of any other Chapter of the Nomenclature, nor excluded by the operation of a Legal Note to Section XVI or to this Chapter. The principal electrical goods covered more specifically by other Chapters are electrical machinery of **Chapter 84** and certain instruments and apparatus of **Chapter 90**.

We note that by the terms of the headings, if the instant merchandise is described by the terms of heading 8571, HTSUS, it cannot be classified in heading 8543, HTSUS, as it is specified elsewhere in the Chapter. The EN to

heading 8543, HTSUS, supports this view. The RF power amplifiers are used in cellular phones to amplify and transmit radio frequency signals. Radio frequency transmission of an electrical signal requires corresponding power amplification for the intended transmission range. See [www.electronics-manufacturers.com](http://www.electronics-manufacturers.com). The RF power amplifier achieves the power amplification by producing, from the input signal, an output signal having an increased magnitude. *Id.* The transistors and integrated circuitry filter the signal or provide impedance matching at a particular operating frequency. *Id.* As the RF power amplifier is an electrical apparatus for the transmission or reception of data between two points, it is expressly provided for in heading 8517, HTSUS. It is used to convert data into electrical impulses and transmit that impulse. It is used to amplify and transmit RF signals to a cellular tower in order to enable the user to successfully complete calls. Insofar as the RF power amplifier has an individual function which is otherwise provided for in Chapter 85, it cannot be classified in heading 8543, HTSUS.

**HOLDING:**

By application of GRI 1, the RF power amplifier module is classified in heading 8517, HTSUS. It is specifically provided for in subheading 8517.62.0050, HTSUSA (annotated), which provides for: "Telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof: Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network): Machines for the reception, conversion and transmission or regeneration of voice, images or other data, including switching and routing apparatus: . . . . Other . . . ." The 2008 column one, general rate of duty is "Free".

Duty rates are provided for your convenience and subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the internet at [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY R04974, dated October 23, 2006, is revoked.

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

