

U.S. Customs and Border Protection

General Notices

AGENCY INFORMATION COLLECTION ACTIVITIES:

User Fees

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: 1651–0052

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: User Fees. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a 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** (74 FR 12877) on March 25, 2009, 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 July 8, 2009.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to 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 collec-

tion 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: User Fees

OMB Number: 1651–0052

Form Number: CBP Forms 339A, 339C and 339V

Abstract: The information collected on the User Fee Forms 339A, 339C and 339V is necessary in order for CBP to collect the proper amount of fees from private and commercial vessels, private aircraft, operators of commercial trucks, and passenger and freight railroad cars entering the United States. This collection of information also applies to reports filed by user fee express consignment operators.

Current Actions: This submission is being made to extend the expiration date with a change to the burden hours to allow for revisions to Form 339C for commercial vehicles.

Type of Review: Extension (with change)

Affected Public: Businesses or other for-profit institutions

Estimated Number of Respondents: 75,030

Estimated Number of Annual Responses: 75,110

Estimated Time Per Response: 18.5 minutes

Estimated Total Annual Burden Hours: 23,562

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW, 7th Floor, Washington, DC. 20229–1177, at 202–325–0265.

Dated: June 3, 2009

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

[Published in the Federal Register, June 8, 2009 (74 FR 27161)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, June 10, 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.*

19 CFR PART 177

PROPOSED REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TAR- IFF CLASSIFICATION OF PHOTSENSITIVE SENSORS

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

ACTION: Notice of proposed revocation of two ruling letters and treatment relating to tariff classification of photosensitive sensors.

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 U.S. Customs and Border Protection (“CBP”) intends to revoke two ruling letters pertaining to the tariff classification of photosensitive sensors under the Harmonized Tariff Schedule of the United States (“HTSUS”). CBP also intends 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 July 26, 2009.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Trade and Commercial Regulations Branch, 799 9th Street, N.W., 5th Floor, Washington, D.C. 20229–1179. Comments submitted may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., – 5th Floor, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Ieva O’Rourke, Tariff Classification and Marking Branch, (202) 325–0298.

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 two ruling letters pertaining to the classification of photosensitive sensors. Although in this notice CBP is specifically referring to the revocation of New York Ruling Letter (NY) K86469, dated June 21, 2004 (Attachment A), and NY I87325, dated October 25, 2002 (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., 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 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 notice of this proposed action.

In NY K86469, and NY I87325, set forth as Attachments A and B to this document, CBP classified certain photosensitive sensors in heading 8541, HTSUS, specifically subheading 8541.40.80, HTSUS, as: "[p]hotosensitive semiconductor devices: Other: Optical coupled isolators." It is now CBP's position that the photosensitive sensors are classified in heading 8543, HTSUS, specifically under subheading 8543.70.96, HTSUS, which provides for "[e]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other. . . ."

Pursuant to 19 U.S.C. §1625(c)(1), CBP intends to revoke NY K86469, and NY I87325, and revoke or modify any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling (HQ) HQ H044701 (Attachment C). 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, we will give consideration to any written comments timely received.

DATED: June 2, 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 K86469
June 21, 2004 CLA-2-85:RR:NC:MM:109 K86469
CATEGORY: Classification
TARIFF NO.: 8541.40.8000

MS. REGINA CROSS
ASSISTANT VICE PRESIDENT
YUSEN AIR & SEA SERVICES (USA) INC
*Airport Industrial Park Bldg. C-3 Hook Creek Blvd & 145th Avenue
Valley Stream, NY 11581*

RE: The tariff classification of Sunx Fiber Sensors from Japan

DEAR MS. CROSS:

In your letter dated May 24, 2002, you requested a tariff classification ruling, on behalf of the Aromat Corporation.

The merchandise is described in your letter as Sunx Fiber Sensors. There are five Sunx Fiber Sensor model numbers subject to this ruling. The model numbers are FX-301, FX-302, FX-303, FX-311, and the FX-11A.

The Sunx brand Fiber Sensor is a photosensitive semiconductor device whose structure consists of a light emitting diode (LED), photodiode, optical elements (filters, lens, mirrors), resistor, capacitor, transistor, integrated circuit (IC), and fiber, which is connected to a fiber-optic cable. The sensor emits, receives, and converts the light energy into an electrical signal. The cable is the mechanical component, which transports the light into and out of areas that are either too space constrained or too hostile. The cable then transports the light back to the sensor. The sensor is an optical coupled isolator (photo sensor device) with the essential character being that of the LED (emitter) and photodiode (receiver).

The Sunx Fiber Sensor is categorized into two groups: thru-beam type and reflective type. Each of the model numbers subject to this ruling (FX-301, FX-302, FX-303, FX-311, and the FX-11A) have a series of different type sensors, which are available in either the thru-beam type or reflective type.

The thru-beam type has two fiber cables. One is attached to the LED (emitter), of the remote sensor and is used to guide light energy to a sensing location. The other is attached to the photodiode (receiver) of the remote sensor and is used to guide light energy from the sensing location back to the remote sensor. The LED and photodiode are positioned opposite each other. Sensing is achieved when the light beam that extends from the LED to the photodiode cable is interrupted.

The reflective type has one fiber cable that contains both, the LED (emitter) and the photodiode (receiver). The emitter and receiver strands are laid side-by-side along the length of the cable. When an object is in front of the sensing area, light from the emitter cable reflects off the object and back into the receiver of the remote sensor via the receiver cable, and detection is achieved.

The applicable subheading for the Sunx Fiber Sensors (Model Numbers FX-301, FX-302, FX-303, FX-311, and the FX-11A.) will be 8541.40.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Photosensitive semiconductors . . . Other: Optical coupled isolators." The

rate of duty will be free. 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 Linda M. Hackett at 646-733-3015.

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

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
NY I87325
October 25, 2002
CLA-2-85:RR:NC:MM:109 I87325
CATEGORY: Classification
TARIFF NO.: 8541.40.8000

MS. REGINA CROSS
ASSISTANT VICE-PRESIDENT
YUSEN AIR & SEA SERVICE (USA) INC.
*Airport Industrial Park, Building C-3 Hook Creek Blvd. & 145 TH Avenue
Valley Stream, NY 11581*

RE: The tariff classification of Photoelectric Sensors from Japan

DEAR MS. CROSS:

In your letter dated October 11, 2002, you requested a tariff classification ruling on behalf of Aromat Corporation of San Jose, California.

The merchandise is described in your letter as Photoelectric Sensors. These are solid state devices consisting of a Light-Emitting Diode (LED) and photo diode. The LED is used as a light emitter device and the photo diode is used as a receiver device. Both of these components are mounted on a semiconductor or electric components so that the light allows a target to be detected when the LED light path is interrupted. The LED and photo diode are positioned opposite each other and due to a target passing between the two, the received light level is changed creating an effect produced by the light. Photoelectric sensors are designed for the detection of small to large objects in applications such as sensing of circuit racks and detection of wafers with digital or analog capabilities. The photoelectric sensor will act in response to a target's presence or absence to carry out such functions as positioning, counting, measuring and sensing. The photoelectric sensors consist of complementary outputs, NPN and PNP transistors, which are able to change state at the same time.

The applicable subheading for the Photoelectric Sensors will be 8541.40.8000, Harmonized Tariff Schedule of the United States (HTS), which provides for "Diodes, transistors and similar semiconductor devices: photosensitive semiconductor devices . . . light-emitting diodes; mounted piezoelectric crystals . . . Other: Optical coupled isolators." The rate of duty

will be free. 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 Linda M. Hackett at 646-733-3015.

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

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H044701
CLA-2:OT:RR:CTF:TCM H044701 IOR
CATEGORY: Classification
TARIFF NO.: 8543.70.96, HTSUS

MS. REGINA CROSS,
ASSISTANT VICE PRESIDENT
YUSEN AIR & SEA SERVICES (USA) INC.
Airport Industrial Park Bldg. C-3
Hook Creek Blvd. & 145th Avenue
Valley Stream, NY 11581

RE: Sunx Fiber Sensors; Photoelectric sensors; NY I87325 and NY K86469 revoked

DEAR MS. CROSS:

This letter concerns New York Ruling Letter (NY) I87325 and NY K86469, which the National Commodity Specialist Division (NCS) of U.S. Customs and Border Protection (CBP) issued to you on October 25, 2002, and June 21, 2004, respectively, on behalf of Aromat Corporation. In those rulings photoelectric sensors and five Sunx Fiber Sensors (models FX-301, FX-302, FX-303, FX-311, and FX-11A) were found to be classifiable as photosensitive semiconductor devices, in subheading 8541.40.80 Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered this classification and now believe that it is incorrect.

FACTS:

In NY I87325, the articles were described as follows:

The merchandise is described in your letter as Photoelectric Sensors. These are solid state devices consisting of a Light-Emitting Diode (LED) and photo diode. The LED is used as a light emitter device and the photo diode is used as a receiver device. Both of these components are mounted on a semiconductor or electric components so that the light allows a target to be detected when the LED light path is interrupted. The LED and photo diode are positioned opposite each other and due to a target passing between the two, the received light level is changed creating an effect produced by the light. Photoelectric sensors are designed for the detection of small to large objects in applications such as

sensing of circuit racks and detection of wafers with digital or analog capabilities. The photoelectric sensor will act in response to a target's presence or absence to carry out such functions as positioning, counting, measuring and sensing. The photoelectric sensors consist of complementary outputs, NPN and PNP transistors, which are able to change state at the same time.

In NY K86469, the article was described as follows:

The Sunx brand Fiber Sensor is a photosensitive semiconductor device whose structure consists of a light emitting diode (LED), photodiode, optical elements (filter, lens, mirrors), resistor, capacitor, transistor, integrated circuit (IC), and fiber, which is connected to a fiber-optic cable. The sensor emits, receives, and converts the light energy into an electrical signal. The cable is the mechanical component, which transports the light into and out of areas that are either too space constrained or too hostile. The cable then transports the light back to the sensor. The sensor is an optical coupled isolator (photo sensor device) with the essential character being that of the LED (emitter) and photodiode (receiver).

In the context of a pending Protest and Application for Further Review (AFR), filed on behalf of Panasonic Electric Works Corporation of America (Panasonic) (formerly known as Aromat Corporation), it was brought to our attention that the sensors which are the subject matter of the AFR are substantially similar to those which were the subject of NY I87325 and NY K86469. In a document submitted in support of the AFR it was stated that "the components and function of the units at issue are substantially identical to the sensors in NY I87325 and NY K86469." In additional information provided by Panasonic with respect to the operation of the Sunx sensors which are the subject of the AFR, the function of the main circuit of the photoelectric sensor was described as follows:

The main circuit supplies electricity to allow the photoelectric sensor to operate. A pulsed oscillation circuit lets the LED emit pulsed light. This light is received by the receptor and converted into electricity by the photoelectric conversion circuit, and an amp subsequently amplifies the current. The volume control and related adjustments on the sensor vary this amplification factor.

ISSUE:

Whether the photoelectric sensors and Sunx Fiber Sensors are classifiable as photosensitive semiconductor devices of heading 8541, HTSUS, or electrical machines and apparatus, having individual functions, not specified or included elsewhere, in heading 8543, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, 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. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

- 8541 Diodes, transistors and similar semiconductor devices; photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes; mounted piezoelectric crystals; parts thereof:
- 8541.40 Photosensitive semiconductor devices, including photovoltaic cells whether or not assembled in modules or made up into panels; light-emitting diodes:
 - Other:
- 8541.40.80 Optical coupled isolators
 - * * *
- 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 Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the EN's provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the system. CBP believes the ENs should always be consulted. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

CBP has previously considered the applicability of headings 8543 and 8541, HTSUS, to a device consisting of a photosensitive semiconductor device and an IC. In HQ 965099, dated October 30, 2001, an infrared detecting unit was classified in heading 8543, HTSUS, specifically in subheading 8543.89.96 (now 8543.70.96), HTSUS, as other electrical machines and apparatus, having individual functions, not specified or included elsewhere. The device consisted of a photodiode chip and a signal processing integrated circuit assembled on a metal frame. The importer took the position that the device was classifiable in heading 8541, HTSUS, specifically in subheading 8541.40.60, HTSUS, as a photosensitive semiconductor device.

CBP, citing EN 85.41, concluded that because “the integrated circuit performs the significant functions of detecting and amplifying the signal which are not subsidiary to the function of the photodiode chip,” the integrated circuit took the infrared detecting unit beyond the terms of heading 8541, HTSUS. EN 85.41 provides, in pertinent part, as follows:

(B) Photosensitive Semiconductor Devices

This group comprises photosensitive semiconductor devices in which the action of visible rays, infra-red rays or ultra-violet rays causes varia-

tions in resistivity or generates an electromotive force, by the internal photoelectric effect.

....

The main types of photosensitive semiconductor devices are:

....

(2) **Photovoltaic cells**, which convert light directly into electrical energy without the need for an external source of current. . . .

Special categories of photovoltaic cells are:

....

(ii) **Photodiodes** (germanium, silicon, etc.), characterised by a variation in resistivity when light rays strike their p n junction. . . .

(iii) **Photocouples** and **photorelays** consisting of electroluminescent diodes combined with photodiodes, phototransistors or photothyristors.

As described in EN 85.41, a photocouple is composed of an LED (electroluminescent diode) (emitter) and photodiode (receiver), and is a type of photovoltaic cell, which is in turn a type of photosensitive semiconductor device. The LED and photodiode are positioned opposite each other. The LED emits light onto the photodiode creating a light path. The receiver converts the light to current (electrical energy). When the light path is interrupted, the device detects the disruption and reacts.

The Sunx Fiber Sensors which were the subject of NY K86469 consist of an LED, photodiode, optical elements (filter, lens, mirrors), resistor, capacitor, transistor, integrated circuit (IC), and fiber. While the sensors have the components of a photocouple, the sensors perform amplification of the current which is not a function subsidiary to the conversion of light into electrical energy. Similarly, while the photoelectric sensor which was the subject of NY I87325 has the components of a photocouple, the sensor performs amplification of the current which is not a function subsidiary to the conversion of light into electrical energy. In both instances, the amplification of the current is a function beyond the scope of the photosensitive semiconductor devices of heading 8541, HTSUS.

Based on the scope of heading 8541, HTSUS as explained by the EN, we find that the sensors' function of amplification of current, take the Sunx Fiber Sensors of NY K86469, and the photoelectric sensors of NY I87325, beyond the terms of heading 8541, HTSUS. This is consistent with the decision in HQ 965099. The devices are also not classifiable in heading 8542, HTSUS, as electronic integrated circuits. Heading 8542 provides only for integrated circuits. The devices at issue are not electronic integrated circuits as defined in Note 8(b) to Chapter 85. In particular, they are not multichip integrated circuits as they consist of only one integrated circuit and include active or passive circuit elements (transistor, resistor and capacitor).

The Sunx Fiber Sensors and the photoelectric sensors are classified in heading 8543, HTSUS, which provides for "[e]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter. . . ." The sensors are specifically classified in subheading 8543.70.96, HTSUS, which provides for "other machines and apparatus."

HOLDING:

Under the authority of GRI 1, the Sunx Fiber Sensors, (models FX-301, FX-302, FX-303, FX-311, and FX-11A) and the photoelectric sensors are

provided for in heading 8543, HTSUS. They are classified in subheading 8543.70.96, HTSUSA, which provides for “[e]lectrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Other: Other: Other. . .” with a column one, general duty rate of 2.6% 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.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

NY I87325, dated October 25, 2002 and NY K86469, dated June 21, 2004 are revoked.

MYLES B. HARMON,

Director,

Commercial and Trade Facilitation Division.

**REVOCATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF A PEZ DISPENSER**

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the tariff classification of a Pez dispenser.

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 U.S. Customs and Border Protection (CBP) is revoking New York Ruling Letter (NY) 852481, dated June 5, 1990, which pertains to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a Pez dispenser. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 43, No. 18, on May 1, 2009. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 25, 2009.

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 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 43, No. 18, on May 1, 2009, proposing to revoke NY 852481, in which CBP classified a Pez dispenser under subheading 3923.90.00, HTSUS (1990), which provided for: “[a]rticles of plastic for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: [o]ther”. No comments were received in response to the notice. As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (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 with substantially identical transactions should have advised CBP during the comment period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may

raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY 852481 to reflect the proper tariff classification of this merchandise under sub-heading 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 the analysis set forth in HQ H026238, which is attached to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

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

DATED: June 4, 2009

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 H026238
June 4, 2009
CLA-2 OT:RR:CTF:TCM H026238 GC
CATEGORY: Classification
TARIFF NO.: 3926.90.9980

JOE COURET
PANALPINA, INC.
HARBORSIDE FINANCIAL CENTER
34 Exchange Place, Plaza Two – 8th Floor
Jersey City, New Jersey 07302

RE: Tariff classification of Pez dispensers; Revocation of NY 852481

DEAR MR. COURET:

In New York Ruling Letter (NY) 852481, dated June 5, 1990, Customs and Border Protection (CBP) issued to Pez Manufacturing Corp. (Pez) a binding ruling on the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) of certain pocket-sized candy dispensers. We have since reviewed NY 852481 and find it to be in error. Notice of the proposed action was published in the Customs Bulletin, Vol. 43, No. 18, on May 1, 2009. No comments were received in response to the notice.

FACTS:

The merchandise subject to NY 852481 was a plastic Pez pocket-size dispenser imported without any candy. After importation, the subject candy dispenser is packaged with two individually wrapped packages of candy,

which the consumer will place within the dispenser. The sample Pez dispenser provided for in NY 852481 had a “Snoopy” head at the top.

In NY 852481, CBP held that the subject Pez dispenser was classified under subheading 3923.90.00, HTSUS (1990), which provided for: “[a]rticles of plastic for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics: [o]ther.” The subheading remains unchanged in the 2008 version of the HTSUS.

ISSUE:

Whether the Pez dispenser is classified under heading 3923, HTSUS, as a plastic article for the conveyance of goods, or under heading 3926, HTSUS, as an other article of plastic?

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:
3923.90.00	Other . . .
3923.90.0080	Other
	* * *
3926	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.90	Other:
3926.90.99	Other . . .
3926.90.9980	Other
	* * *

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 relevant ENs are as follows:

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.*, Headquarters Ruling Letter (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 Pez dispenser is not designed to carry bulk or commercial goods. In fact, the Pez dispenser does not carry candy until the purchaser places the candy within the dispenser. 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 candy in the same manner that the pencil box of HQ 960199 facilitated the personal storage and transportation of pencils. Because the subject Pez dispenser is designed for the purchaser's personal use with regards to carrying and dispensing candy, it is not within the scope of heading 3923, HTSUS.

Because the subject Pez dispenser does not fall within the scope of heading 3923, HTSUS, 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 Pez Dispenser is currently classifiable under heading 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." 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/.

EFFECT ON OTHER RULINGS:

NY 852481, dated June 5, 1990, is hereby REVOKED.

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

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

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**REVOCATION OF RULING LETTER AND 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 revocation of a ruling letter and revocation of treatment relating to the tariff classification of a certain 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 U.S. Customs and Border Protection (CBP) is revoking Headquarters Ruling Letter (HQ) 084525, dated August 10, 1989, which pertains to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of a certain cigarette case. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published in the Customs Bulletin, Vol. 43, No. 4, on January 15, 2009. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 25, 2009.

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 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Vol. 43, No. 4, on January 15, 2009, proposing to revoke HQ 084525, in which CBP determined that the subject cigarette case was classified under 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 . . .” No comments were received in response to the notice. As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ruling identified above. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (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 with substantially identical transactions should have advised CBP during the comment period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking HQ 084525 to reflect the proper tariff classification of this merchandise under 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 the analysis set forth in HQ

H026225, which is attached to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP is revoking any treatment previously accorded by it to substantially identical transactions.

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

DATED: June 4, 2009

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 H026225
June 4, 2009
CLA-2 OT:RR:CTF:TCM H026225 GC
CATEGORY: Classification
TARIFF NO.: 926.90.9980

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. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on January 15, 2009, in Volume 43, Number 4, of the CUSTOMS BULLETIN. CBP received no comments in response to the notice.

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	oxes, 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 paper-board, 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/.

EFFECT ON OTHER RULINGS:

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

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

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

**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF PAINTBALL CAPSULES**

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 paintball capsules.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625(c)), as amended by section 623 of the 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 U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of paintball capsules. Similarly, CBP is revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on May 1, 2009, in Vol. 43, No. 18, of the Customs Bulletin. One comment was received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after August 25, 2009.

FOR FURTHER INFORMATION CONTACT: Isaac D. Levy, Tariff Classification and Marking Branch: (202) 325-0028.

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, a notice was published in the Customs Bulletin, Vol. 43, No. 18, on May 1, 2009, proposing to revoke a ruling letter pertaining to the tariff classification of paintball capsules. Although in that notice, CBP specifically proposed to revoke New York Ruling Letter (NY) B85784, dated June 4, 1997, the notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has under-

taken 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 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 this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

We received one comment opposing the revocation of NY B85784. The commenter argued that the scope of heading 9306, HTSUS, is limited to projectiles that are used as weapons that cause severe damage to a target. However, the paintball capsules meet the provisions of heading 9306, HTSUS, as projectiles, and we find no such limitation in scope. Therefore, the subject articles are classified in heading 9306, HTSUS, and specifically, in subheading 9306.90.00, HTSUS.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY B85784, and revoking or modifying any other ruling not specifically identified to reflect the proper classification of the subject merchandise according to the analysis contained in Headquarters Ruling Letter (HQ) H054812, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

DATED: June 5, 2009

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 H054812
June 5, 2009
CLA-2 OT:RR:CTF:TCM H054812 IDL
CATEGORY: Classification
TARIFF NO.: 9306.90.00

MR. PETER D. ALBERDI
A.J. ARANGO, INC.
1516 East 8th Avenue
Tampa, Florida 33605

Re: Paintballs from Italy; Revocation of NY B85784

DEAR MR. ALBERDI:

This letter concerns New York Ruling Letter (NY) B85784, dated June 4, 1997, issued to you, on behalf of your client, R.P. Scherer North America, by the National Commodity Specialist Division, U.S. Customs Service (now Customs and Border Protection (CBP)). The decision in NY B85784 involves the classification of "paintballs from Italy" under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY B85784 and have found it to be incorrect.

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 in the Customs Bulletin, Vol. 43, No. 18, on May 1, 2009. One comment was received in response to the notice.

FACTS:

In NY B85784, the paintballs were described as follows:

Paintballs are soft gelatin capsules which are a mixture of vegetable oil and food coloring. These paintballs are used in the game of paintball. . . . [P]aintball is a game in which opposing teams attempt to capture the other's flag station. When a player gets tagged (hit by a paintball) he/she is out of the game. The paintballs are an essential part of the game of paintball.

The game of paintball is described in an article written by the chief editor of a popular paintball magazine, "Recon," as posted on the Web site (<http://www.paintball.org>) of the Paintball Sports Trade Association, thus:

Paintball is a game in which players use compressed-gas-powered guns (paintball markers) to shoot each other with small balls of encapsulated gelatin. When these paintballs break, they leave a brightly-colored mark, about the size of a quarter, signifying that the player is eliminated from the game.

* * *

Games are played in the woods . . . or on small fields containing brightly colored inflatable bunkers. . . . (Allcot, Dawn, Ed., Recon Magazine).

In NY B85784, the U.S. Customs Service classified the subject paintballs in heading 9504, HTSUS, as "articles for arcade, table or parlor games." CBP now takes the position that the subject paintballs are properly classified in heading 9306, HTSUS, as "projectiles."

ISSUE:

Whether the subject paintballs are properly classified in heading 9306, HTSUS, as “projectiles,” or in heading 9504, HTSUS, as “articles for arcade, table or parlor games”?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the 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, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied in order. GRI 3 provides for goods that are, *prima facie*, classifiable under two or more headings. GRI 6 provides that “for legal purposes”, classification of goods in the subheading of a heading shall be determined according to the terms of those subheadings and any related subheading notes, and *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. GRI 6 thus incorporates GRIs 1 through 5 in classifying goods at the subheading level.

The 2009 HTSUS provisions under consideration are as follows:

9306	Bombs, grenades, torpedoes, mines, missiles and similar munitions of war and parts thereof; cartridges and other ammunition and projectiles and parts thereof, including shot and cartridge wads: * * *
9306.30	Other cartridges and parts thereof:
9306.30.41	Cartridges and empty cartridge shells. . . . * * *
9306.90.00	Other. . . . * * *
9504	Articles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof: * * *
9504.90	Other:
9504.90.40	Game machines, other than those operated by coins, banknotes (paper currency), discs or similar articles; parts and accessories thereof. . . .

Note 1(s) to chapter 95, HTSUS, provides the following:

1. This chapter does not cover:

* * *

(s) Arms or other articles of chapter 93;

* * *

The game of paintball is “played in the woods . . . or on small fields,” as described above, not in an arcade, parlor, or on a table. As such, the subject articles are not “articles for arcade, table or parlor games,” as provided in heading 9504, HTSUS. Therefore, we find that the subject articles do not meet the terms of heading 9504, HTSUS. Furthermore, pursuant to Note 1(s) to chapter 95, HTSUS, insofar as the subject articles are classifiable in a heading of chapter 93, HTSUS, they cannot be classified in a heading of chapter 95.

Heading 9306 of chapter 93, HTSUS, describes cartridges and projectiles. Merriam-Webster’s Third New International Dictionary, Unabridged (1965), defines “cartridge”, in pertinent part, as follows:

1a: a tube of metal, paper, or a combination of both containing a complete charge for a firearm and in modern ammunition usu. containing a cap or other initiating device. . . . **b:** a case containing an explosive charge for blasting. . . . [Emphasis added]

Similarly, the American Heritage Dictionary of the English Language: Fourth Ed. (2000), defines “cartridge”, in pertinent part, as follows:

1a: a cylindrical, usually metal casing containing the primer and charge of ammunition for firearms.” [Emphasis added]

Further, “projectile” is defined in Merriam-Webster’s, in pertinent part, as follows:

1: a body projected by external force and continuing in motion by its own inertia. . . .

The subject articles are not cartridges, as they contain no casing, primer, or charge. Although no specific information is available in the instant case regarding the precise mechanism used to propel the subject paintballs, paintballs are ordinarily propelled using “compressed-gas-powered guns,” as discussed above. Upon firing, paintballs continue in motion by their own inertia. As such, the articles meet the definition of “projectiles.” Therefore, we find that the subject articles are classified in heading 9306, HTSUS, and specifically, in subheading 9306.90.00, HTSUS.

We received one comment opposing the revocation of NY B85784. The commenter argued that the scope of heading 9306, HTSUS, is limited to projectiles that are used as weapons that cause severe damage to a target. We disagree. The paintball capsules meet the provisions of heading 9306, HTSUS, as projectiles, and we find no such limitation in scope. Therefore, the subject articles are classified in heading 9306, HTSUS, and specifically, in subheading 9306.90.00, HTSUS.

HOLDING:

By application of GRI 1, the paintballs described above are classified in heading 9306, HTSUS, and are specifically provided for under subheading 9306.90.00, HTSUS, as: “[P]rojectiles . . . : Other.” The 2009 column one, general rate of duty is “free.”

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/>.

EFFECT ON OTHER RULINGS:

NY B85784, dated June 4, 1997, is revoked. In accordance with 19 U.S.C. § 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

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