

# U.S. Customs and Border Protection



## REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF TOBACCO WRAPPERS

**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 certain tobacco wrappers.

**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 a ruling concerning the tariff classification of certain tobacco wrappers 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 modification was published on August 29, 2012, in the Customs Bulletin, Volume 46, Number 36. No comments were received in response to this notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** Robert Shervette, Office of International Trade, Tariff Classification and Marking Branch, at (202) 325-0274.

### 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”), become 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 on August 29, 2012, in the Customs Bulletin, Volume 46, No. 36, proposing to revoke one ruling letter pertaining to the tariff classification of “Brownies Original Tobacco Wrappers”. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (“NY”) C82943, dated January 13, 1998, 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 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 intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision of this notice.

In NY C82943, CBP classified “Brownies Original Tobacco Wrappers” under heading 4813, HTSUS, which provides for: “[c]igarette paper, whether or not cut to size or in the form of booklets or tubes.” Upon our review of NY C82943, we have determined that the “Brownies Original Tobacco Wrappers” described in that ruling are properly

classified under heading 2403, HTSUS, which provides for “[o]ther manufactured tobacco and manufactured tobacco substitutes; ‘homogenized’ or ‘reconstituted’ tobacco; tobacco extracts and essences.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY C82943, 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”) H073917, set forth as 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.

Dated: July 17, 2014

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

Attachment

HQ H073917

CLA-2 OT:RR:CTF:TCM H073917 RES

JUL 17 2014

CATEGORY: Classification

TARIFF NO.: 2403.91.2000

MR. KONRAD W. ADDERLEY  
BROWN SACK TRADING COMPANY  
217 EAST 86TH STREET  
NEW YORK, NY 10028

RE: Revocation of New York Ruling Letter C82943, dated January 13, 1998.

DEAR MR. ADDERLEY:

This is in regard to New York (“NY”) Ruling Letter C82943, issued to you on January 13, 1998, regarding the classification of tobacco wrappers, under the Harmonized Tariff Schedule of the United States (“HTSUS”). In NY C82943, Customs and Border Protection (“CBP”) classified the tobacco wrappers as cigarette paper, under heading 4813, HTSUS. We have reconsidered this ruling and determined that the tobacco wrappers are properly classified under heading 2403, HTSUS, which provides for “homogenized’ or ‘reconstituted’ tobacco suitable for use as wrapper tobacco.”

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 August 29, 2012, in Volume 46, Number 36, of the *Customs Bulletin*. CBP did not receive any comments during the notice period.

**FACTS:**

The following facts were set forth in NY C82943:

A sample was submitted and will be retained for reference. It is a small paperboard dispenser package containing ten loose 2 1/8" x 3 7/8" sheets of paper-like product identified as “Brownies Original Tobacco Wrapper”. The sheets have a brown color, and are said to be composed of 75.37% homogenized tobacco (also known as tobacco foil), 8.07% methylcellulose, and 14.58% carrier T6 (a teabag-like paper used to carry or hold tobacco). The sheets are said to be used for the hand-rolling of loose tobacco filler into cigarettes.

**ISSUE:**

Whether the tobacco wrappers are classified under heading 2403, HTSUS, as homogenized or reconstituted tobacco suitable for use as wrapper tobacco or under heading 4813, HTSUS, as cigarette paper?

**LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods 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, and if the headings and legal notes do not otherwise require, the remaining GRI 2 through 6 may be applied in order.

The HTSUS headings under consideration in this case are as follows:

- 2403            Other manufactured tobacco and manufactured tobacco substitutes; “homogenized” or “reconstituted” tobacco; tobacco extracts and essences:
- 4813            Cigarette paper, whether or not cut to size or in the form of booklets or tubes:

Note 1 to Chapter 24, HTSUS, states in pertinent part:

1. The term “*wrapper tobacco*”, as used in this chapter, means that quality of leaf tobacco which has the requisite color, texture and bum, and is of sufficient size for cigar wrappers, and the term “*filler tobacco*” means all other leaf tobacco.

\* \* \* \* \*

(Emphases in original).

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The EN’s to heading 2403 provide in pertinent part the following:

This heading covers:

\* \* \* \* \*

(6) “**Homogenised**” or “**reconstituted**” tobacco made by agglomerating finely divided tobacco from tobacco leaves, tobacco refuse or dust, whether or not on a backing (e.g., sheet of cellulose from tobacco stems), generally put up in the form of rectangular sheets or strip. It can be either used in the sheet form (as a wrapper) or shredded/chopped (as a filler).

\* \* \* \* \*

(Emphases in original). The relevant ENs to Chapter 48, HTSUS, are the following:

\* \* \* \* \*

Paper consists essentially of the cellulosic fibres of the pulps of Chapter 47 felted together in sheet form. Many products, such as certain tea-bag materials, consist of a mixture of these cellulose fibres and of textile fibres (in particular man-made fibres as defined in Note 1 to Chapter 54). Where the textile fibres predominate by weight, the products are not regarded as paper and are classified as nonwovens . . .

\* \* \* \* \*

The pertinent ENs to Chapter 47 are as follows:

\* \* \* \* \*

General

The pulp of this Chapter consists essentially of cellulose fibres obtained from various vegetable materials, or from waste textiles of vegetable origin.

\* \* \* \* \*

Other materials used for making pulp include:

- (1) Cotton liners.
- (2) Recovered (waste and scrap) paper or paperboard.
- (3) Rags (particularly cotton, linen or hemp) and other textile wastes such as old ropes.
- (4) Straw, esparto, flax, ramie, jute, hemp, sisal, bagasse, bamboo and various other grasses and reeds.

\* \* \* \* \*

The tobacco wrappers at issue in NY C82943 are composed of three different materials: homogenized tobacco, methylcellulose, and a material called “carrier T6”. Homogenized tobacco is a mixture of chopped scrap tobacco that is held together by the methylcellulose, which acts as an adhesive.<sup>1</sup> The chopped scrap tobacco is mashed into a pulp and then it is reconstituted with the methylcellulose. The “carrier T6” material is a teabag-like paper that is added as part of the wrapper sheet. The tobacco wrappers are thicker than non-homogenized tobacco cigarette rolling papers and are used to make cigarillos by adding loose short filler tobacco in the tobacco wrapper and rolling into a cylinder like shape.<sup>2</sup>

The wrappers were originally classified as cigarette papers under heading 4813, HTSUS, because the importer stated that the wrappers were to be used for hand-rolling of loose tobacco filler into cigarettes. The tariff term “paper” is not defined in the Chapter 48, HTSUS, legal notes. However, the ENs to Chapter 48 indicate that “paper” consists of cellulosic fibres of the pulps of Chapter 47. The wrappers do not meet the definition of “paper” as they are composed of homogenized tobacco, which is not a pulp of Chapter 47. Thus, the tobacco wrappers would not be classified under heading 4813, HTSUS, because the articles are composed of homogenized/reconstituted tobacco which is not a material used for making pulp for classification purposes.

Rather, EN(6) to heading 2403 describes homogenized/reconstituted tobacco as an agglomeration of various tobacco materials that may be on a backing and is fabricated and sold in the form of rectangular sheets. The tobacco wrappers here meet this description of homogenized/reconstituted tobacco, which is *eo nomine* classifiable under heading 2403. Furthermore, pursuant to Note 1 of Chapter 24, the homogenized/reconstituted tobacco used in the Brownies product is considered wrapper tobacco because it possesses a brown color, rough texture, slow burning quality, and is made into sufficient sized wrappers for use as cigarillos. A wrapper for cigars may be

<sup>1</sup> See <http://www.cigaraficionado.com/glossary/index/word/M> (last visited August 17, 2011); for a historical background of homogenized tobacco, see also <http://www.time.com/time/magazine/article/0,9171,862262,00.html> (last visited August 17, 2011).

<sup>2</sup> See <https://www.rollingpapers.com/cgi/commerce.cgi?preadd=action&key=5928> (last visited August 17, 2011). A “cigarillo” is a small cigar made of short filler tobacco (See <http://tobacconistuniversity.org/glossary.asp#267> (last visited August 17, 2011)).

composed of materials in addition to tobacco and still be considered a tobacco wrapper as long as it contains a substantial amount of tobacco, does not lose its tobacco character (e.g., taste, aroma, identifiable chemical compounds), and is of a color consistent with that of the natural leaf tobaccos traditionally used as a wrapper for American cigars. See ATF Ruling 73\_72<sup>3</sup>; 26 U.S.C. § 5702. The methylcellulose and T6 in the instant articles act as binders and backing to form the tobacco sheets and do not alter the character of the reconstituted tobacco wrappers.

Therefore, the Brownies Original Tobacco Wrappers are classified under heading 2403, HTSUS, as “[o]ther manufactured tobacco and manufactured tobacco substitutes; ‘homogenized’ or ‘reconstituted’ tobacco; tobacco extracts and essences.”

**HOLDING:**

By the application of ORI 1, the Brownies Original Tobacco Wrappers are classified under subheading 2403.91.2000, HTSUSA, which provides for “[o]ther manufactured tobacco and manufactured tobacco substitutes; ‘homogenized’ or ‘reconstituted’ tobacco; tobacco extracts and essences: [o]ther: ‘[h]omogenized’ or ‘reconstituted’ tobacco: [s]uitable for use as wrapper tobacco.” The general, column one, rate of duty is 62 cents/kg.

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 [www.usitc.gov/tata/hts/](http://www.usitc.gov/tata/hts/).

Imported tobacco products are subject to additional federal excise taxes. Importers are instructed to check with the Alcohol and Tobacco Tax Bureau for updated information on federal excise tax liability for imported tobacco products at <http://www.ttb.gov/>.

**EFFECTS ON OTHER RULINGS:**

NY C82943, dated January 13, 1998, 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*.

*Sincerely,*

IEVA K. O’ROURKE

*for*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

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<sup>3</sup> Located at <http://www.ttb.gov/rulings/73-22.htm> (last visited May 2, 2012).

**NOTICE OF REVOCATION OF RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF AN AUTOMOBILE HEATER  
CONTROLLER ASSEMBLY**

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

**ACTION:** Notice of revocation of one ruling letter and treatment concerning the tariff classification of an automobile heater controller assembly.

**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 one ruling letter relating to the tariff classification of an automobile heater controller assembly under the Harmonized Tariff Schedule of the United States. CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on August 22, 2012, in the Customs Bulletin, Vol. 46, No. 35. No comments were received in response to that notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** Dwayne S. Rawlings, Tariff Classification and Marking Branch, (202) 325-0092.

**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 that 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 commu-

nity'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. 46, No. 35, on August 22, 2012, proposing to revoke New York Ruling Letter (NY) N075384, dated October 7, 2009, pertaining to the tariff classification of an automobile heater controller assembly. No comments were received in response to that notice. As stated in the proposed notice, this action will cover any rulings on the subject merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the 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 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 the final notice of this action.

In NY N075384, CBP classified an automobile heater controller assembly in heading 8708, HTSUS, specifically subheading 8708.29.50, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories of bodies (including cabs): Other: Other." It is now CBP's position that the heater controller assembly is properly classified in heading 8537, HTSUS, specifically under subheading 8537.10.90, HTSUS, which provides for "Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those

incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517: For a voltage not exceeding 1,000 V: Other.”

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking ruling NY N075384, and any other ruling not specifically identified, in order to reflect the proper analysis contained in ruling HQ H083278 (Attachment). CBP is also revoking any treatment previously accorded by it 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: July 16, 2014

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

Attachment

HQ H083278  
CLA-2 OT:RR:CTF:TCM H083278DSR  
CATEGORY: Classification  
TARIFF NO.: 8537.10.90

MR. RALPH GARCIA  
MITSUBISHI MOTORS NORTH AMERICA, INC.  
6400 KATELLA AVENUE  
CYPRESS, CA 90630

RE: Revocation of NY N075384; tariff classification of a motor vehicle heater controller assembly

DEAR MR. GARCIA:

This letter is in reference to New York Ruling Letter (NY) N075384, issued to you on October 7, 2009, regarding the classification under the 2009 Harmonized Tariff Schedule of the United States (HTSUS) of a motor vehicle heater controller assembly (“assembly”) designed exclusively for use in Mitsubishi automobiles. The ruling classified the assembly under subheading 8708.29.50, HTSUS, which provides for “Parts ... of ... motor vehicles ...: Other parts ... of bodies ... : Other: Other,” dutiable at 2.5% *ad valorem*.

CBP has reviewed the tariff classification of the assembly and has determined that the cited ruling is in error. Therefore, NY N075384 is revoked for the reasons set forth in this ruling.

#### FACTS:

The item in question is identified as a “Heater Controller Assembly (part number 7820A064HA),” and its primary function is to control the airflow and air temperature within an automobile for the comfort of the driver and passengers. As a secondary function, you state that the assembly provides a mounting surface for several air conditioning components as well as an aesthetic finish that matches the contours of the instrument panel.

A thorough examination of the assembly identifies the following components:

1. One heater controller -a mounting subcomponent made from molded plastic incorporating a printed circuit board (PCB) populated with active and passive components including two lamp-holders with incandescent lamps
2. Three light emitting diode (LED) lamps
3. One electrical rotary switch that regulates fan speed
4. Three electrical push-button switches for the vehicle’s rear defogger and NC on/off control, and the recirculation of interior air
5. Two mechanical rotary levers with Bowden cables<sup>1</sup> for directing air flow and temperature

<sup>1</sup> A Bowden cable is a type of flexible cable used to transmit mechanical force or energy by the movement of an inner cable (most commonly of steel or stainless steel) relative to a

6. One heater control cover panel with identifying labels
7. Three plastic knobs

**ISSUE:**

Whether the motor vehicle heater controller assembly in question is classified under heading 8708, HTSUS, as a part or accessory of the motor vehicles of headings 8701 to 8705; or under subheading 8537.10.90, HTSUS, as a base equipped with two or more apparatus of heading 8535 or 8536, forelectric control or the distribution of electricity.

**LAW AND ANALYSIS**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI's). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI's 2 through 6 may then be applied in order. In addition, in interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The HTSUS provisions under consideration in this case are as follows:

**8537** Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517:

\* \* \*

**8708** Parts and accessories of motor vehicles of headings 8701 to 8705.

\* \* \*

Initially, Section XVI, Note 1(1), HTSUS, excludes articles of Section XVII. Heading 8708, parts and accessories of motor vehicles, is in Section XVII. However, Section XVII, Note 2(f), HTSUS, states the following:

The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this section: . . . Electrical machinery or equipment (chapter 85).

The question, therefore, is whether the heater assembly is described by a provision in Chapter 85.

Heading 8536, HTSUS, covers electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-hollow outer cable housing. The cable housing is generally of composite construction, consisting of a spiral steel wire, often coated with plastic, and with a plastic outer sheath.

holders and other connectors, junction boxes), for a voltage not exceeding 1,000 volts. The subject heater assembly consists of several individual, but interconnected, switches intended to contribute together to electrically control or provide power (not exceeding 1,000 volts) to several apparatus of a motor vehicle, i.e., the vehicle's heater, fan, rear defogger, and A/C. Each of those switches meets the plain language of heading 8536, HTSUS.

In order to be classified in heading 8537, HTSUS, a device must be equipped with two or more apparatus of heading 8535 or 8536, HTSUS. Under General Note 4 to Section XVI, machines composed of interconnected units, intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or 85, falls to be classified as a functional unit in the heading appropriate to that function. Also, the ENs to heading 8537, HTSUS, state the following:

[The goods of the heading] consist of an assembly of apparatus of the kind referred to in the two preceding headings (e.g., switches and fuses) on a board, panel, console, etc., or mounted in a cabinet, desk, etc. They usually also incorporate meters, and sometimes also subsidiary apparatus such as transformers, valves, voltage regulators, rheostats or luminous circuit diagrams.

Contrary to our statement in NY N075384 that the assembly “only incorporates one electrical item classifiable in HTSUS headings 8535 or 8536; a Heater Blower Switch classifiable in HTSUS heading 8536,” the subject heater assembly meets the plain language of heading 8537, HTSUS because it is an assembly of “two or more” devices of heading 8536, HTSUS. By operation of Section XVII, Note (2)(f), HTSUS, it is eliminated from consideration as a good of heading 8708, HTSUS.

#### **HOLDING:**

By application of GRI 1, the subject merchandise identified as “Heater Controller Assembly (part number 7820A064HA),” is classifiable under heading 8537, HTSUS. Specifically, it is classifiable under subheading 8537.10.90, HTSUS, which provides for “Boards, panels, consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90, and numerical control apparatus, other than switching apparatus of heading 8517: For a voltage not exceeding 1,000 volts: Other.” The column one, general rate of duty is 2.7%.

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 N075384, dated October 7, 2009, is hereby revoked.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**GENERAL NOTICE****19 CFR PART 177****PROPOSED MODIFICATION OF A RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO  
CLASSIFICATION OF PHOSPHOR PLATE BARRIER  
ENVELOPES**

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

**ACTION:** Notice of proposed modification of a ruling letter and proposed revocation of treatment relating to the classification of phosphor plate barrier envelopes.

**SUMMARY:** Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (“CBP”) is proposing to modify a ruling concerning the classification of phosphor plate barrier envelopes, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

**DATES:** Comments must be received on or before October 3, 2014.

**ADDRESSES:** Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade—Regulation and Rulings, Attn: Mr. Joseph Clark, 90 K Street N.E. 10th Floor, Washington D.C. 20229-1179. Comments submitted may be inspected at 90 K Street N.E. 10th Floor 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:** Allyson Mattanah, Tariff Classification and Marking Branch (202) 325-0029.

## SUPPLEMENTARY INFORMATION:

### Background

On December 8, 1993, Title VI (CBP 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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP proposes to modify a ruling pertaining to the classification of phosphor plate barrier envelopes. Although in this notice CBP is specifically referring to New York Ruling Letter NY N050327 (Attachment “A”), dated February 20, 2009, 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 data bases 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 (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 his agents for importations of merchandise subsequent to this notice.

In NY N050327, CBP classified the merchandise in subheading 3926.90.9980, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics, other. The referenced ruling is incorrect because the merchandise is not different with regard to the function of the cover *vis-a-vis* the x-ray apparatus from the covers for a CCO/CMOS sensors classified in the same ruling. Both types of covers keep the image from being distorted and provide comfort in the patient's mouth so that it may be more easily positioned.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify NY N050327, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter H061207. (Attachment "B"). 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, consideration will be given to any written comments timely received.

Dated: July 18, 2014

IEVA K. O'ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

ATTACHMENT A

NO50327

February 20, 2009

CLA-2-90:OT:RR:NC:N1:105

CATEGORY: Classification

TARIFF NO.: 9022.90.6000; 3926.90.9980;  
3926.90.5000

MR. JAY PARK  
EXCEL INTERNATIONAL OF N.Y. CORP.  
146-27 167TH ST, SUITE 201  
JAMAICA, NY 11434

RE: The tariff classification of plastic covers and mounts from China.

DEAR MR. PARK:

In your letter dated January 28, 2009 for Flow Dental, you requested a tariff classification ruling. Five samples were provided.

The first two samples are a Comfees Sensor Sleeve and an Econo Comfees Sensor Sleeve. They are small, transparent, plastic covers for sensors that are used in dental X-rays. The sensor is placed inside the patient's mouth, converts the X-rays which strike it into electrical signals, and transmits those signals via an electrical wire to other apparatus. The sensors are thus analogous to the X-ray screens cited in the Heading to HTSUS 9022. The sleeve is designed to protect the sensor and to help protect the patient's mouth from its edges.

The next two samples are the Safe'n'Sure and Deluxe Safe'n'Sure Phosphor Plate Barrier Envelopes. A phosphor plate is placed in a barrier envelope and then placed on a film holding device. The phosphor plates are exposed to x-rays inside the patient's mouth, removed, and then read by a specialized apparatus. These envelopes are not accessories to X-ray apparatus, but rather are accessories to photographic plates and films, which are excluded from heading 9022 by Harmonized System Explanatory Note Exclusion (b) to 9022.

The last sample is a Flow X-ray mount. Developed dental x-rays are placed into one of the multiple, transparent pockets of the mount. They remain in the mount for storage and during examination of the x-rays by use of a negatoscope (to shine light through them.)

The applicable subheading for the Sensor Sleeves will be 9022.90.6000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for "other" parts and accessories of apparatus based on the use of X-rays. The rate of duty will be 0.8 percent ad valorem.

The applicable subheading for the phosphor plate barrier envelopes will be 3926.90.9980, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastics, other. The rate of duty will be 5.3 percent ad valorem.

The applicable subheading for the dental X-ray film mounts will be 3926.90.5000, Harmonized Tariff Schedule of the United States (HTSUS), which provides for other articles of plastic, frames, and mounts for photographic slides. The rate of duty will be 3.8 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/tatalhts/>.

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 J. Sheridan at 646-733-3012.

*Sincerely,*

ROBERT B. SWIERUPSKI

*Director*

*National Commodity Specialist Division*

ATTACHMENT B

HQ H061207  
OT:RR:CTF:TCM H061207 ARM  
CATEGORY: Classification  
TARIFF NO.: 9022.90.60

MR. JAY PARK  
EXCEL INTERNATIONAL OF N.Y. CORP.  
146-27 16TH ST., SUITE 201  
JAMAICA, NY 11434

RE: Reconsideration of NY N050327; Safe 'n' Sure and Deluxe Safe 'n' Sure Phosphor Plate Barrier Envelopes

DEAR MR. PARK:

This is in response to your letter and submitted sample, dated March 12, 2009, requesting reconsideration of New York Ruling Letter ("NY") N050327, dated February 20, 2009, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of phosphor plate barrier envelopes. We have reviewed that ruling and find it to be incorrect. This ruling modifies NY N050327.

**FACTS:**

The merchandise at issue is the "Safe 'n' Sure" and "Deluxe Safe 'n' Sure" Phosphor Plate Barrier Envelopes. In NY N050327, we stated:

The next two samples are the Safe'n'Sure and Deluxe Safe'n'Sure Phosphor Plate Barrier Envelopes. A phosphor plate is placed in a barrier envelope and then placed on a film holding device. The phosphor plates are exposed to x-rays inside the patient's mouth, removed, and then read by a specialized apparatus. These envelopes are not accessories to X-ray apparatus, but rather are accessories to photographic plates and films, which are excluded from heading 9022 by Harmonized System Explanatory Note Exclusion (b) to 9022.

In your March 12, 2009 letter, you confirm that these photostimulable sensors require the image to be placed in a scanner which transfers the image to a computer. The product information submitted states "Safe 'n' Sure is available for ... plates and work with any plate on the market (Kodak, Dentoptix, etc)."

**ISSUE:**

Whether the Phosphor Plate Barrier Envelopes are accessories to x-ray apparatus of heading 9022, or, if not, are classified as plastic articles of heading 3926.

**LAW AND ANALYSIS:**

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken 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.

The HTSUS provisions under consideration are the following:

3926 Other articles of plastics and articles of other materials of headings 3901 to 3914 (con.):

3926.90: Other:

3926.90.99 Other ....

\* \* \* \* \*

9022 Apparatus based on the use of X-rays or of alpha, beta or gamma radiations, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators, control panels and desks, screens, examination or treatment tables, chairs and the like; parts and accessories thereof:

Apparatus based on the use of X-rays, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus:

9022.90 Other, including parts and accessories:

Other:

9022.90.60 Of apparatus based on the use of X-rays

Note 2(u) to Chapter 39 states, in pertinent part, the following:

2. This chapter does not cover.

\*\*\*

(u) Articles of chapter 90 (for example, optical elements, spectacle frames, drawing instruments);

\*\*\*

Note 2 to Chapter 90, HTSUS, provides as follows:

Subject to Note 1 above, parts and accessories for machines, apparatus, instruments or articles of this chapter are to be classified according to the following rules:

(a) Parts and accessories which are goods included in any of the headings of this chapter or of chapter 84, 85 or 91 (other than heading 8485, 8548 or 9033) are in all cases to be classified in their respective headings;

(b) Other parts and accessories, if suitable for use solely or principally with a particular kind of machine, instrument or apparatus, or with a number of machines, instruments or apparatus of the same heading

(including a machine, instrument or apparatus of heading 9010,9013, or 9031) are to be classified with the machines, instruments or apparatus of that kind;

(c) All other parts and accessories are to be classified in heading 9033.

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89-80,54 Fed. Reg. 35127 (August 23,1989).

EN 39.26 states, in pertinent part, the following:

This heading covers articles, not elsewhere specified or included, of plastics (as defined in Note 1 to the Chapter) or of other materials of headings 39.01 to 39.14.

They include:

(4) Dust-sheets, protective bags, awnings, file-covers, document-jackets, book covers and reading jackets, and similar protective goods made by sewing or glueing together sheets of plastics.

EN 9022 states, in pertinent part, the following:

#### PARTS AND ACCESSORIES

Subject to the provisions of Notes 1 and 2 to this Chapter (see the General Explanatory Note), parts and accessories identifiable as being solely or principally for use with X-ray apparatus, etc., are also classified in this heading ....

The heading also **excludes:** ....

(b) Photographic plates and film (**Chapter 37**).

\* \* \* \* \*

The instant merchandise consists of phosphor plate barrier envelopes made of plastic. These envelopes cover the phosphor plate, a photographic plate classifiable in Chapter 37. Photographic plates and film of Chapter 37 are excluded from classification in heading 9022. The marketing literature states "Our regular Safe N Sure PSP envelopes protect your plates while making it quick and easy to load and unload. And your patients will enjoy the added comfort from our rounded corners and soft edges."

In N050327 we reasoned that the sleeves at issue here are designed as accessories to the photographic plates, and not accessories to an article of heading 9022, HTSUS. Since there are no provisions for accessories of Chapter 37, we reasoned that the instant merchandise is classified according to its material make-up.

However, in HQ 955650, dated March 14, 1994, we held that bite wing tabs for similar photographic plates were accessories to the X-ray apparatus as they increase the quality of the X-ray itself and thus improved the operation of the instruments with which they were used. Furthermore, other articles placed in or on the patient's body rather than connected to the x-ray machine itself have been classified as accessories to the x-ray apparatus e.g. absorption filters placed on the patient, HQ 956791, dated July 28, 1994.

The instant merchandise is similar to the bite wings in that by protecting the plate, the x-ray image itself is more likely readable. Furthermore, by rounding the edges for comfort in the patient's mouth, the plate is more easily positioned. Lastly, the covers are used solely with the photographic plates, which are used solely with the x-ray machines to produce an image. While photographic plates themselves are excluded from classification in the heading (EN 90.22), articles attached to the plates that are used in a way to enhance the function of the x-ray itself, are accessories to the machine. We also note that covers for a CCO/CMOS sensors that transmit the image directly to a computer were classified as accessories to the x-ray apparatus. Although a different technology, we find no difference here with regard to the function of the cover *avis-à-vis* the x-ray apparatus. Both types of covers keep the image from being distorted and provide comfort in the patient's mouth so that it may be more easily positioned. Hence, the instant merchandise is an accessory to the X-ray apparatus and therefore meets the terms of heading 9022.

Although heading 3926 indisputably describes the good as an article of plastic, it is excluded from classification in Chapter 39 by virtue of Note 2(u) to Chapter 39. Using GRI 6, the instant articles are classified as accessories to x-ray apparatus, in subheading 9022.90.60, HTSUS.

**HOLDING:**

The Phosphor Plate Barrier Envelopes are classified in heading 9022, HTSUS. Specifically, they are classified in subheading 9022.90.60, HTSUS, the provision for Apparatus based on the use of X-rays or of alpha, beta or gamma radiations, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus, X-ray tubes and other X-ray generators, high tension generators, control panels and desks, screens, examination or treatment tables, chairs and the like; parts and accessories thereof: "Apparatus based on the use of X-rays, whether or not for medical, surgical, dental or veterinary uses, including radiography or radiotherapy apparatus: Other, including parts and accessories: Other: Of apparatus based on the use of X-rays". The general column 1 rate of duty is .8% *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 [www.usitc.gov](http://www.usitc.gov).

**EFFECT ON OTHER RULINGS:**

NY N050327 dated February 20, 2009, is modified.

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**GRANT OF "LEVER-RULE" PROTECTION**

**AGENCY:** Customs and Border Protection (CBP), Department of Homeland Security

**ACTION:** Notice of grant of “Lever-rule” protection.

**SUMMARY:** Pursuant to 19 CFR § 133.2(f), this notice advises interested parties that CBP has granted “Lever-rule” protection to Moroccanoil, Inc.’s “MOROCCANOIL” and “M MOROCCANOIL” trademarks. Notice of the receipt of an application for “Lever-rule” protection was published in the June 11, 2014 issue of the *Customs Bulletin*.

**FOR FURTHER INFORMATION CONTACT:** Tatiana Salnik Matherne, Intellectual Property Rights Branch, Regulations & Rulings, (202) 325–0351.

**SUPPLEMENTARY INFORMATION:**

**Background**

Pursuant to 19 CFR § 133.2(f), this notice advises interested parties that CBP has granted “Lever-rule” protection for the following hair care products, intended for sale in the United States, bearing the “MOROCCANOIL” trademark (CBP Rec. No. TMK 10–00311); the “M MOROCCANOIL” trademark (CBP Rec. No. TMK 10–00312); and the “M MOROCCANOIL” trademark (CBP Rec. No. TMK 10–00315): (1) Moroccanoil Oil Treatment designed and authorized for sale in Israel; (2) Moroccanoil Oil Treatment designed and authorized for sale in Canada; (3) Moroccanoil Oil Treatment designed and authorized for sale in Italy; (4) Moroccanoil Oil Treatment designed and authorized for sale in the United Kingdom; (5) Moroccanoil Oil Treatment designed and authorized for sale in Hong Kong; and (6) Moroccanoil Oil Treatment designed and authorized for sale in Australia.

In accordance with the holding of *Lever Bros. Co. v. United States*, 981 F.2d 1330 (D.C. Cir. 1993), CBP has determined that the gray market hair care products differ physically and materially from their correlating hair care products authorized for sale in the United States with respect to the following product characteristics: product labeling and appearance.

**Enforcement**

Importation of the above-referenced hair care products, intended for sale in other countries is restricted, unless the labeling requirements of 19 CFR § 133.23(b) are satisfied.

Dated: August 11, 2014

CHARLES R. STEUART  
*Chief*  
*Intellectual Property Rights Branch*

**NOTICE OF CORRECTION TO NOTICE OF REVOCATION  
OF RULING LETTERS AND REVOCATION OF TREATMENT  
RELATING TO THE TARIFF CLASSIFICATION OF  
ELECTRICAL MUSCLE STIMULATION MACHINES**

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

**ACTION:** Correction of notice of revocation of ruling letters and revocation of treatment relating to the tariff classification of electrical muscle stimulation machines.

**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 correcting a notice of revocation of ruling letters and revocation of treatment concerning the tariff classification of electrical muscle stimulation machines under the Harmonized Tariff Schedule of the United States (HTSUS). The notice being corrected was published on July 23, 2014, in the *Customs Bulletin and Decisions*, Vol. 48, No. 29. CBP is correcting the notice of revocation because it contained a clerical error.

**EFFECTIVE DATE:** September 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** Laurance W. Frierson, Tariff Classification and Marking Branch: (202) 325–0371.

**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) (“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 U.S. Customs and Border Protection (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

public 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, CBP published a notice of revocation of ruling letters and revocation of treatment relating to the tariff classification of electrical muscle stimulation machines on July 23, 2014, in the *Customs Bulletin and Decisions*, Vol. 48, No. 29 (the “Notice”). However, in the last sentence under “Supplementary Information,” the Notice contained the following clerical error concerning the ruling number made effective by publication of the Notice:

Ruling Letter HQ H223701 will become effective 60 days after publication in the *Customs Bulletin and Decisions*.

The last sentence of under “Supplementary Information” is corrected to state the following:

Ruling Letter HQ H112635 will become effective 60 days after publication in the *Customs Bulletin and Decisions*.

Accordingly, pursuant to 19 U.S.C. § 1625(c)(1), CBP is correcting the clerical error in the Notice by providing the foregoing corrected text.

Dated: September 3, 2014.

IEVA K. O’ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

**GENERAL NOTICE**

**19 CFR PART 177**

**REVOCATION OF A RULING LETTER AND  
MODIFICATION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF AMEVIVE® (ALEFACEPT)**

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

**ACTION:** Notice of revocation of a ruling letter and modification of treatment concerning the tariff classification of Amevive®(alefacept).

**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 CBP is revoking one ruling letter pertaining to the tariff classification of Amevive®(alefacept), 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 revocation was published on April 30, 2014, in Volume 48, Number 17, of the *Customs Bulletin*. No comments were received in response to the proposed notice.

**EFFECTIVE DATE:** This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** Emily Beline, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325–7799.

**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), (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 nec-

essary 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)), a notice was published in the *Customs Bulletin*, Volume 48, Number 17, on April 30, 2014, proposing to revoke New York Ruling Letter (NY) J80522, dated February 21, 2003, and proposing to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the proposed notice.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during 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 his agents for importations of merchandise subsequent to this notice.

In NY J80522 CBP classified Amevive® (alefacept), imported in bulk form, under subheading 3003.90.00, HTSUS, which provides for "Medicaments...consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale: Other," and in single-dose vials under subheading 3004.90.91, HTSUS, which provides for "Medicaments...consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Other." It is now CBP's position that Amevive® (alefacept) is properly classified under subheading 3002.10.02, HTSUS, which provides for "Human blood;...: Antisera, other blood fractions and immunological products, whether or not obtained by means of biotechnological processes."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY J80522, and is revoking any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed Headquarters Ruling Letter H207575. 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: August 11, 2014

IEVA K. O'ROURKE  
*for*  
MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*

Attachment

HQ H207575

July 25, 2014

CLA-2 OT:RR:CTF:TCM H207575 ERB

CATEGORY: Classification

TARIFF NO.: 3002.10.02

MR. HERBERT J. LYNCH, ESP.  
 SULLIVAN & LYNCH, P.C  
 56 ROLAND STREET, SUITE 303  
 BOSTON, MA 02129-1223

RE: Revocation of New York Ruling Letter J80522; classification of Amevive® (alefacept), Alefacept (CAS-222535-22-0), imported in bulk form and single-dose vials, from Germany

DEAR MR. LYNCH,

This is in regard to New York Ruling Letter (NY) J80522, dated February 21, 2003, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of Amevive® (alefacept). In NY J80522, Customs and Border Protection (CBP) classified the product in its bulk form under heading 3003, HTSUS, and in its single-dose vial form under heading 3004, HTSUS, as medicaments. We have reconsidered this ruling and have determined that these modified immunological products, in both forms, are provided for in heading 3002, HTSUS.

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 CBP is revoking a ruling concerning the classification of Amevive® (alefacept), under the HTSUS. Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation was published on April 30, 2014, in Volume 48, Number 17, of the *Customs Bulletin*. No comments were received in opposition to the proposed notice.

**FACTS:**

NY J80522 described Amevive® as follows:

Amevive® (alefacept) is a formulated drug product containing Alefacept (CAS-222535-22-0), an antipsoriatic drug, as the active ingredient. It is a fusion protein (human) consisting of the portion of the LFA-3 molecule<sup>1</sup> that binds to CD-2 antigen<sup>2</sup>, linked to the Fc portion of human immunoglobulin G1. It is produced by recombinant DNA techniques, and is represented by the following empirical chemical formula: C<sub>3264</sub>H<sub>5002</sub>N<sub>840</sub>O<sub>988</sub>S<sub>20</sub>. Alefacept belongs to the class of drugs known as immunomodulators, and is indicated for the treatment of adult patients with moderate to severe chronic plaque psoriasis.

<sup>1</sup> Leukocyte function-associated antigen 3 – a cell-surface glycoprotein expressed on a wide variety of cells. It is referred to as an “antigen,” since it can be identified by specific monoclonal antibodies.

<sup>2</sup> CD-2 antigen – a specific cell-surface marker, found on T lymphocytes, whose major function is to interact with LFA-3. Like LFA-3, it is referred to as an “antigen,” since it can be identified by specific monoclonal antibodies.

NY J80522 classified Amevive® (alefacept), imported in bulk form under subheading 3003.90.000, HTSUS, which provides for “Medicaments...consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale: Other.” NY J80522 also classified Amevive® (alefacept) imported as single-dose vials under subheading 3004.90.9145, HTSUS, which provides for “Medicaments...consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale: Other: Other: Dermatological agents and local anesthetics.”

**ISSUE:**

Are the subject modified immunological products, imported in bulk or single-dosage vial form, both properly classified under heading 3002, HTSUS, as “modified immunological products,” or separately under heading 3003, HTSUS, as “medicaments... not put up in measured does or in forms or packings for retail sale: Other” or heading 3004, HTSUS, as “medicaments ... put up in measured dose or in forms or packings for retail sale: Other: Other: Dermatological agents and local anesthetics”?

**LAW AND ANALYSIS:**

Classification of goods under the HTSUS is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The HTSUS provisions at issue are as follows:

- 3002 Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not modified or obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products:
- 3002.10.02 Antisera, other blood fractions and immunological products, whether or not obtained by means of biotechnological processes<sup>3</sup>:
- \*\*\*
- 3003 Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured does or in forms or packings for retail sale:
- 3003.90.00 Other
- \*\*\*
- 3004 Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale:

<sup>3</sup> In 2002 the subheading at issue was 3002.10.0190. Due to various changes in the tariff not pertinent in this analysis, the subheading at issue is now 3002.10.02, HTSUS.

3004.90 Other:  
3004.90.91 Other

Note 2 to Chapter 30, HTSUS (2002), states: “For the purposes of heading 3002, the expression ‘modified immunological products’ applies only to monoclonal antibodies (MABs), antibody fragments, antibody conjugates and antibody fragment conjugates.”

The Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP’s practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In 2002, the EN to Heading 30.02 stated, in pertinent part:

This heading covers:

\*\*\*

(C) Antisera and other blood fractions and modified immunological products.

These products include:

\*\*\*

(2) **Modified immunological products, whether or not obtained by means of biotechnological processes.**  
[Emphasis in original]

Products whose antigen-antibody reaction corresponds to natural antisera and which are used for diagnostic or therapeutic purposes and for immunological tests are to be regarded as falling within this product group. They can be defined as follows:

- (a) **Monoclonal antibodies (MABs)** - specific immunoglobulins from selected and cloned hybridoma cells cultured in a culture medium or ascites
- (b) **Antibody fragments** – parts of an antibody protein obtained by means of specific enzymatic splitting.
- (c) **Antibody and antibody fragment conjugates** - enzymes (e.g. alkaline phosphatase, peroxidase or beta-galactosidase) or dyes (fluorescin) covalently bound to the protein structure are used for straightforward detection reactions.

\* \* \*

The products of this heading remain classified here whether or not in measured doses or put up for retail sale and whether in bulk or in small packings.

Ruling NY J805229 classified Amevive® under heading 3003 and 3004, HTSUS, depending on whether it was imported in bulk form or in single-dose

vials, respectively. However, the terms of these two headings specifically exclude goods which can be classified under heading 3002, HTSUS. Therefore, if the subject merchandise can be properly classified under heading 3002, HTSUS, imported either in bulk or single-dose vials; it is precluded from classification under heading 3003, HTSUS or 3004, HTSUS.

Amevive® is an antibody fragment conjugate, an antibody combined with a protein, a class of monoclonal antibodies (MABs)<sup>4</sup> which is a type of immunomodulator. Antibody fragment conjugates and MABs are included within the definition of “modified immunological products”. See Note 2 to Chapter 30, HTSUS. They are produced by the body’s immune system for the function of recognizing, binding, and subsequently destroying infectious agents that display foreign antigens, in the instant case, severe chronic plaque psoriasis. The subject merchandise is imported in two forms, bulk and measured doses for retail sale, but the products remain classified in heading 3002, HTSUS, regardless. See 2002 EN 30.02 (C)(2)(a).

Clarifications have been made to the ENs of Heading 30.02 in 2007 and 2012, as well as to Note 2 to Chapter 30 in 2012.

EN 30.02(C)(2)(a) now reads, in pertinent part:

This heading covers:

\*\*\*

(C) Antisera, other blood fractions and immunological products, whether or not modified or obtained by means of biotechnological processes.

These products include:

(2) Immunological products, whether or not modified or obtained by means of biotechnological processes.

Products used for diagnostic or therapeutic purposes and for immunological tests are to be regarded as falling within this product group. They can be defined as follows:

(a) **Monoclonal antibodies (MAB)** – specific immunoglobulins from selected and cloned hybridoma cells cultured in a culture medium or ascites.

(b) **Antibody fragments** – active parts of an antibody protein obtained by means of e.g., specific enzymatic splitting. This group includes inter alia single-chain (scFv) antibodies.

(c) **Antibody conjugates and antibody fragment conjugates** – conjugates which contain at least one antibody or an antibody fragment...

\*\*\*

Note 2 to Chapter 30 now reads:

For the purposes of heading 3002, the expression “immunological products” applies to peptides and proteins (other than goods of heading 2937)

<sup>4</sup>See also here <https://www.inkling.com/read/applied-pharmacology-bardal-waechter-martin-1st/chapter-17/introduction-to-monoclonal> describing how MABs are immunological products because they are produced by the body’s immune system for the function of recognizing, binding, and subsequently destroying infectious agents that display foreign antigens.

which are directly involved in the regulation of immunological processes, such as monoclonal antibodies (MAB), antibody fragments, antibody conjugates and antibody fragment conjugates, interleukens, interferons (IFN), chemokines and certain tumor necrosis factors (TNF), growth factors (GF), hematopoietins and colony stimulating factors (CSF).

In 2002, as today, “modified immunological products” with regard specifically to immunological products, include MABs and antibody fragment conjugates (an antibody combined with a protein), are included in heading 3002, HTSUS. The instant merchandise is just such a fusion protein as is noted in NY J80522.<sup>5</sup> Additionally, the clause, “The products of this heading remain classified here whether or not in measured doses or put up for retail sale and whether in bulk or small packings,” was present in the 2002 version of the ENs, as it remains today.

Therefore, the subject merchandise is properly classified under heading 3002, HTSUS, and is excluded from classification under heading 3003 and 3004, HTSUS<sup>6</sup>. The product is specifically provided for under subheading 3002.10.02, HTSUS, which provides for: “Human blood; animal blood prepared for therapeutic, prophylactic or diagnostic uses; antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes; vaccines, toxins, cultures of micro-organisms (excluding yeasts) and similar products: Antisera, other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”.

#### **HOLDING:**

By application of GRI 1, the subject merchandise Amevive® is classified in subheading 3002.10.02, HTSUS, which provides for “... modified immunological products, whether or not obtained by means of biotechnological processes ... : Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes”. The 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 [www.usitc.gov](http://www.usitc.gov)

#### **EFFECT ON OTHER RULINGS:**

New York Ruling Letter J80522, dated February 21, 2003, is REVOKED.

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

<sup>5</sup> Additionally, the statement contained in NYJ80522, “Alefacept does not meet the tariff definition of a modified immunological product” was incorrect even when ruled upon in 2003, before any changes to the Chapter Notes or ENs, pursuant to Scientific Subcommittee 27th session document no. NS0248E1a to amend EN 30.02 (C)(2)(b) to include, “This group includes inter alia single-chain (scFv) antibodies” of which Alefacept is one.

<sup>6</sup> See also, HQ H128157, dated August 2, 2011 (classifying Campath®, a monoclonal antibody medicament under heading 3002, HTSUS), and HQ H110419, dated August 2, 2011 (classifying Antegren®, a monoclonal antibody medicament under heading 3002, HTSUS), and HQ H110420, dated August 2, 2011 (classifying Avastin® and Herceptin®, monoclonal antibody medicaments under heading 3002, HTSUS), and lastly, HQ H110421, dated August 2, 2011 (classifying Raptiva®, Rituxan®, and Xolair®, monoclonal antibody medicaments, under heading 3002, HTSUS).

*Sincerely,*  
IEVA K. O'ROURKE  
*for*  
MYLES B. HARMON,  
*Director*  
*Commercial and Trade Facilitation Division*

**REVOCAION OF THREE RULING LETTERS AND  
REVOCAION OF TREATMENT RELATING TO THE  
TARIFF CLASSIFICATION OF PHENYLKETONURIA  
NUTRITIONAL SUPPLEMENTS**

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

**ACTION:** Notice of revocation of three ruling letters and revocation of treatment relating to the tariff classification of Phenylketonuria nutritional supplements.

**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 three rulings concerning the tariff classification of Phenylketonuria nutritional supplements under the Harmonized Tariff Schedule of the United States (“HTSUS”). Notice of the proposed modification and revocation was published on April 30, 2014, in the *Customs Bulletin*, Volume 48, Number 17. No comments were received in response to this notice.

**DATES:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** Robert Shervette, Office of International Trade, Tariff Classification and Marking Branch, at (202) 325–0274.

**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”), become 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 on April 30, 2014, in the *Customs Bulletin*, Volume 48, Number 17, proposing to revoke three ruling letters pertaining to the tariff classification of certain nutritional supplements. Although in the proposed notice, CBP is specifically referring to the revocation of New York Ruling Letters (“NY”) NY N006049, dated February 6, 2007, NY N006048, dated February 6, 2007, and NY N005717, dated January 26, 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 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 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 a substantially identical transaction should have advised CBP during this notice period. An importer’s failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision of this notice.

In NY N005717, NY N006048, and NY N006049, CBP classified phenylalanine-free nutritional supplement articles under subheading

3004.90.9190, HTSUSA, as “[m]edicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale: [o]ther: [o]ther: [o]ther: [o]ther.” Upon our review of these two rulings, we have determined that the merchandise described in the rulings are properly classified under subheading 2106.90.9998, HTSUSA, as “[f]ood preparations not elsewhere specified or included: [o]ther: [o]ther.”

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is revoking NY N005717, NY N006048, and NY N006049 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”) H240613, set forth as “Attachment A” to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Dated: August 6, 2014

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

Attachment

HQ H240613

August 6, 2014

CLA-2 OT:RR:CTF:TCM H240613 RES

CATEGORY: Classification

TARIFF NO.: 2106.90.9998

MR. MARK DEFRIES  
 SOLACE NUTRITION  
 46 KILVERT STREET  
 WARWICK, RI 02866

RE: Revocation of New York Ruling Letters N006048, dated February 6, 2007, N006049, dated February 6, 2007, and N005717, dated January 26, 2007; classification of medical foods used for dietary management of Phenylketonuria.

DEAR MR. DEFRIES:

This letter is to inform you that U.S. Customs and Border Protection (“CBP”) has reconsidered New York (“NY”) Ruling letters N006048 and N006049, both dated February 6, 2007, and N005717, dated January 26, 2007, regarding the classification of medical foods used for dietary management of Phenylketonuria<sup>1</sup> (“PKU”), under the Harmonized Tariff Schedule of the United States (“HTSUS”). The merchandise in NY N006048, NY N006049, and NY N005717 were classified as medicaments, under heading 3004, HTSUS. We have determined that NY N006048, NY N006049, and NY N005717 were in error. Accordingly, we are revoking NY N006048, NY N006049, and NY N005717, to reflect the proper classification of the medical foods used for dietary management of PKU.

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 April 30, 2014, in Volume 48, Number 17, of the *Customs Bulletin*. No comments were received in response to this notice.

**FACTS:**

The following facts were set forth in NY N006048:

The subject product, NeoPhe® LNAA Tablets®, is described as a “medical food,” for use, under medical supervision, for the dietary management of phenylketonuria (PKU). The tablets contain large neutral amino acids (LNAAs) as the active ingredient. Wording on the printed label found on the container in which the tablets are supplied states that the tablets are “[N]ot for the general population of consumers.”

Pursuant to HQ 083000, dated September 19, 1990, the applicable sub-heading for NeoPhe® LNAA Tablets® will be 3004.90.9190, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Medicaments ... consisting of mixed or unmixed products for therapeutic or

<sup>1</sup> “Phenylketonuria (commonly known as PKU) is an inherited disorder that increases the levels of a substance called phenylalanine in the blood. Phenylalanine is a building block of proteins (an amino acid) that is obtained through the diet. It is found in all proteins and in some artificial sweeteners. If PKU is not treated, phenylalanine can build up to harmful levels in the body, causing intellectual disability and other serious health problems.” See <http://ghr.nlm.nih.gov/condition/phenylketonuria> (last visited July 20, 2012).

prophylactic uses, put up in measured doses ... or in forms or packings for retail sale: Other: Other: Other: Other.” The rate of duty will be free.

The following facts were set forth in NY N006049:

The subject products, Avonil® AA Tablets and Avonil® AA Powder, are phenylalanine-free nutritional supplements consisting of various amino acids, vitamins and minerals. Both products are specifically intended for the dietary management of phenylketonuria (PKU). The tablets are used by persons with phenylketonuria from 4 years of age, including maternal PKU patients. The powder is for use by children over 4 months of age, and by adults, including maternal PKU patients.

Pursuant to HQ 083000, dated September 19, 1990, the applicable sub-heading for Avonil® AA Tablets and Avonil® AA Powder will be 3004.90.9190, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses ... or in forms or packings for retail sale: Other: Other: Other: Other.” The rate of duty will be free.

The following facts were set forth in NY N005717:

The subject product, PreKUnil® LNAA Tablets®, is described as a “medical food,” for use under medical supervision, for the dietary management of Phenylketonuria (PKU). The tablets contain large neutral amino acids (LNAAs) as the active ingredient. Wording on the printed label found on the container in which the tablets are supplied states that the tablets are “[N]ot for the general population of consumers.”

Pursuant to HQ 083000, dated September 19, 1990, the applicable sub-heading for PreKUnil® LNAA Tablets® will be 3004.90.9190, Harmonized Tariff Schedule of the United States (HTSUS), which provides for “Medicaments ... consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses ... or in forms or packings for retail sale: Other: Other: Other: Other.” The rate duty will be free.

#### **ISSUE:**

Whether the subject merchandise are classified under heading 2106, HTSUS as food preparations or under 3004 as medicaments?

#### **LAW AND ANALYSIS:**

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI), and, in the absence of special language or context which otherwise requires, by the Additional U.S. Rules of Interpretation (ARI). GRI 1 provides that the classification of goods 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, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may be applied in order.

The following HTSUS provisions are under consideration:

- 2106 Food preparations not elsewhere specified or included:
- 3004 Medicaments (excluding goods of heading 3002, 3005 or 3006) consisting of mixed or unmixed products for therapeutic or prophylactic uses, put up in measured doses (including those in the form of transdermal administration systems) or in forms or packings for retail sale:

Legal Note 1(f) to Chapter 21, HTSUS, excludes from classification under Chapter 21 “[y]east put up as a medicament or other products of heading 3003 or 3004.”

Legal Note 1(a) to Chapter 30, HTSUS, excludes from classification under Chapter 30 the following:

Foods or beverages (such as dietetic, diabetic or fortified foods, food supplements, tonic beverages and mineral waters), other than nutritional preparations for intravenous administration (Section IV)

In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System, which constitute the official interpretation of the Harmonized System at the international level, may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The ENs to 21.06 provide in pertinent part:

**Provided that they are not covered by any other heading of the Nomenclature**, this heading covers:

(A) Preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk, etc.), for human consumption.

(B) Preparations consisting wholly or partly of foodstuffs, used in making of beverages or food preparations for human consumption. The heading includes preparations consisting of mixtures of chemicals (organic acids, calcium salts, etc.) with foodstuffs (flour, sugar, milk, powder, etc.), for incorporation in food preparations either as ingredients or to improve some of their characteristics (appearance, keeping qualities, etc.) (see the General Explanatory Note to Chapter 38).

\* \* \* \* \*

The heading includes, *inter alia*:

(14) \* \* \*

The heading **excludes** products where a infusion constitutes a therapeutic or prophylactic dose of an active ingredient specific to a particular ailment (**heading 30.03 or 30.04**).

\* \* \*

(16) Preparations, often referred to as *food supplements*, based on extracts from plants, fruit concentrates, honey, fructose, etc. and containing added vitamins and sometimes minute quantities of iron compounds. These

preparations are often put up in packagings with indications that they maintain general health or well-being. Similar preparations, however, intended for the prevention or treatment of diseases or ailments are **excluded (heading 30.03 or 30.04)**.

\* \* \* \* \*

(Emphases in original).

The ENs to 30.04 provide in pertinent part:

\* \* \* \* \*

The provisions of the heading text do not apply to foodstuffs or beverages such as dietetic, diabetic or fortified foods, tonic beverages or mineral waters (natural or artificial), which fall to be classified under **their own appropriate headings**. This is essentially the case as regards food preparations containing only nutritional substances. The major nutritional substances in food are proteins, carbohydrates and fats. Vitamins and mineral salts also play a part in nutrition.

Similarly foodstuffs and beverages containing medicinal substances are **excluded** from the heading if those substances are added solely to ensure a better dietetic balance, to increase the energy-giving or nutritional value of the product or to improve its flavour, always provided that the product retains its character of a foodstuff or a beverage.

Moreover, products consisting of a mixture of plants or parts of plants or consisting of plants or parts of plants mixed with other substances, used for making herbal infusions or herbal “teas” (e.g., those having laxative, purgative, diuretic or carminative properties), and claimed to offer relief from ailments or contribute to general health and well-being, are also **excluded** from this heading (**heading 21.06**).

Further, this heading **excludes** food supplements containing vitamins or mineral salts which are put up for the purpose of maintaining health or well-being but have no indication as to use for the prevention or treatment of any disease or ailment. These products which are usually in liquid form but may also be put up in powder or tablet form, are generally classified in **heading 21.06 or Chapter 22**.

On the other hand, the heading covers preparations in which the foodstuff or the beverage merely serves as a support, vehicle or sweetening agent for the medicinal substances (e.g., in order to facilitate ingestion).

\* \* \* \* \*

(Emphases in original).

The tariff term “food” is not specifically defined in the HTSUS. “When a tariff term is not defined in either the HTSUS or its legislative history, the term’s correct meaning is presumed to be its common meaning in the absence of evidence to the contrary.” *Timber Prods. Co. v. United States*, 515 F.3d 1213, 1219 (Fed. Cir. 2008). In discerning this common meaning, dictionaries, encyclopedias, scientific authorities, and other reliable information sources may be consulted to construe the meaning of a statute’s words. See *Len-Ron Mfg. Co. v. United States*, 334 F.3d 1304, 1309 (Fed. Cir. 2003).

The Merriam-Webster online dictionary defines “food” as:

**1** *a*: material consisting essentially of protein, carbohydrate, and fat used in the body of an organism to sustain growth, repair, and vital processes and to furnish energy; *also*: such food together with supplementary substances (as minerals, vitamins, and condiments) *b*: inorganic substances absorbed by plants in gaseous form or in water solution

**2**: nutriment in solid form

See <http://www.merriam-webster.com/dictionary/food> (last visited July 12, 2012). In Webster’s New World College Dictionary, “food” is defined as “any substance taken into and assimilated by a plant or animal to keep it alive and enable it to grow and repair tissue; nourishment; nutriment . . . anything that nourishes or stimulates . . .” See Webster’s New World College Dictionary 550 (fourth ed. 2007). Other online sources define “food” similarly as “any nourishing substance that is eaten, drunk, or otherwise taken into the body to sustain life, provide energy, promote growth, etc”<sup>2</sup> or as “[m]aterial, usually of plant or animal origin, that contains essential nutrients, such as carbohydrates, fats, proteins, vitamins, or minerals, and is ingested and assimilated by an organism to produce energy, stimulate growth, and maintain life.”<sup>3</sup>

Thus, based on the common definition of food and EN(A) 21.06, “food”, for tariff purposes is defined as any nourishing substance containing essential nutrients that is ingested and assimilated by a person to produce energy, stimulate growth, and maintain life. There is nothing that limits the definition of food to conventional food articles. For tariff purposes, food can encompass natural, processed, and highly formulated substances used for nourishment, which includes medical foods and substances that are part of an elemental diet such as nutritional supplements designed specifically for persons with PKU. As such, unless specified elsewhere, the merchandise at issue is described by the term “food preparation” of heading 2106, HTSUS.

The classification of the articles in NY N006048, NY N006049, and NY N005717, as medicaments was predicated upon the classification of similar merchandise in HQ 083000, dated September 19, 1990, which classified nutritional supplements used by persons with PKU as medicaments under heading 3004, HTSUS. However, CBP in HQ 966779, dated January 16, 2004, determined that the effect of the 2002 amendment to Chapter note 1(a) to Chapter 30 was to revoke by operation of law HQ 083000, and the analysis contained within it, and exclude any and all nutritional products from chapter 30 unless they are administered intravenously. Consequently, HQ 083000 was, at the time NY N006048, NY N006049, and NY N005717 were issued, no longer a valid precedent for the classification of nutritional supplements for PKU products under heading 3004, HTSUS. Rather, HQ 966779 classified nutritional foods/supplements designed for use by persons with PKU as food preparations under heading 2106, HTSUS. The analysis set forth in HQ 966779 is incorporated here by reference.

Therefore, upon reconsideration that the classification of the merchandise in NY N006048, NY N006049, and NY N005717 was based upon a revoked

<sup>2</sup>See <http://dictionary.reference.com/browse/food> (last visited July 12, 2012).

<sup>3</sup>See <http://medical-dictionary.thefreedictionary.com/food> (last visited July 12, 2012).

HQ ruling, CBP has determined that the classifications in NY N006048, NY N006049, and NY N005717 of the nutritional foods for PKU under heading 3004, HTSUS, are incorrect. Nutritional foods/supplements for persons with PKU are excluded from classification in Chapter 30 and are therefore classified under heading 2106, as “food preparations not elsewhere specified or included.”

**HOLDING:**

Pursuant to GRI 1, Legal Note 1(a) to Chapter 30, and HQ 966779, the NeoPhe® LNAA Tablets®, Avonil® AA Tablets, Avonil® AA Powder, and PreKUnil® LNAA Tablets® are classified under subheading 2106.90.9998, HTSUS, as “[f]ood preparations not elsewhere specified or included: [o]ther: [o]ther: [o]ther: [o]ther: [o]ther: [o]ther; [o]ther; [o]ther; [o]ther; [o]ther.” The column one, rate of duty, is 6.4 percent *ad valorem*

**EFFECTS ON OTHER RULINGS:**

NY N006048 and NY N006049, both dated February 6, 2007, and NY N005717, dated January 26, 2007, are revoked.

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

*Sincerely,*

MYLES B. HARMON,

*Director*

*Commercial and Trade Facilitation Division*

**GENERAL NOTICE**

**19 CFR PART 177**

**MODIFICATION OF A RULING LETTER AND  
REVOCATION OF TREATMENT RELATING TO  
CLASSIFICATION OF PRINTER CARTRIDGES**

**AGENCY:** U.S. Customs and Border Protection (“CBP”), Department of Homeland Security.

**ACTION:** Notice of modification of ruling letter and revocation of treatment relating to the classification of printer cartridges.

**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 CBP is modifying one ruling concerning the classification of printer cartridges under the Harmonized Tariff

Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N022500, dated February 11, 2008, was published in the Customs Bulletin, Vol. 47, No. 52, on January 2, 2014. One comment was received in response to this notice.

**EFFECTIVE DATE:** This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 3, 2014.

**FOR FURTHER INFORMATION CONTACT:** Tamar Anolic, Tariff Classification and Marking Branch: (202) 325-0036.

**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 (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that CBP is modifying a ruling letter pertaining to the classification of printer cartridges. Although in this notice CBP is spe-

cifically referring to New York Ruling Letter (NY) N022500, dated February 11, 2008, 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 data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who 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 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 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 have advised 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 his agents for importations of merchandise subsequent to this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is modifying NY N022500 in order to correct the description of the subject merchandise and to clarify that, in light of the comments received on the proposed notice, it is the completed printer cartridges that are being imported and not rolls of thermal transfer ribbons, according to the analysis contained in Headquarters Ruling Letter (HQ) H097674, which is attached to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: August 5, 2014

IEVA K. O'ROURKE  
*for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

**Attachment**

HQ H097674

August 5, 2014  
CLA-2 OT:RR:CTF:TCM H097674 TNA  
CATEGORY: Classification  
TARIFF NO.: 8443.99.25

MS. PENELOPE PERKINS  
JOHN S. JAMES, Co.  
4119-F ROSE LAKE DRIVE  
CHARLOTTE, NC 28217

RE: Modification of NY N022500; Classification of printer cartridges containing thermal transfer ribbon

DEAR MS. PERKINS:

This letter is in reference to New York Ruling Letter (“NY”) N022500, issued to you on behalf of DNP IMS America on February 11, 2008, concerning the tariff classification of printer cartridges for dye sublimation printers. In NY N022500, U.S. Customs and Border Protection (“CBP”) classified these cartridges in heading 8443, Harmonized Tariff Schedule of the United States (“HTSUS”), as a part of a printer. We have reviewed NY N022500, and found the description of the merchandise to be incorrect. For the reasons set forth below, we hereby modify NY N022500.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke NY N022500 was published in the Customs Bulletin, Vol. 47, No. 52, on January 2, 2014. One comment was received in response to this notice, which is addressed in the ruling.

**FACTS:**

The subject merchandise consists of printer cartridges that are designed to be used solely with dye sublimation printers. These printers are capable of being connected to an automated data processor (“ADP”) or network. Dye sublimation printers function by way of a printing process that uses heat to transfer dye onto medium materials such as a plastic card, paper, or fabric. By way of example, they are typically used to transfer bar codes onto removable paper labels. It is called “sublimation” because the dye transitions between the solid and gas states without going through a liquid stage.

The subject cartridges are manufactured from imported polyethylene terephthalate (“PET”) film. The film consists of a core, a trailer, the thermal transfer ribbon, a leader, and an adhesive tab. The core is typically made of fiber or plastic. The trailer communicates with the printer so that the printer knows when the ribbon is finished. The leader protects the ribbon during shipping and facilitates the loading of the ribbon into the printer. The adhesive tab secures the leader around the ribbon so that it will not unravel.

The film, which is of Japanese origin, is admitted into a Free Trade Zone (“FTZ”), where it is combined with a plastic feed spool, a plastic take-up spool, two geared flanges, and two non-geared flanges. There is no indication that any of the components of the printer cartridges are admitted into the FTZ in Privileged Foreign Status. The feed spool and take-up spools are custom molded plastic shapes that are specifically designed for the printer in which they are used. One of the flanges contains a radio-frequency identification (“RFID”) chip, which communicates information to the printer, such as image count, tension, and torque. Without these printer cartridges, the printers

with which they are used cannot function. The merchandise withdrawn from the FTZ is a completed printer cartridge.

In NY N022500, CBP classified the subject merchandise in subheading 8443.99.25, HTSUS, as “Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof: Parts and accessories: Other: Parts and accessories of printers: Other.”

#### ISSUE:

Whether printer cartridges are classified in heading 3702, HTSUS, as “Photographic film in rolls” or in heading 8443, HTSUS, as parts and accessories of “Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442”?

#### LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRI). 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 may then be applied.

The HTSUS provisions under consideration are as follows: The HTSUS provisions under consideration are as follows:

3702	Photographic film in rolls, sensitized, unexposed, of any material other than paper, paperboard or textiles; instant print film in rolls, sensitized, unexposed:
8443	Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof:

Note 2 to Chapter 37, HTSUS, provides that:

In this chapter the word “*photographic*” relates to the process by which visible images are formed, directly or indirectly, by the action of light or other forms of radiation on photosensitive surfaces.

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, 54 Fed. Reg. 35127 (Aug. 23, 1989).

The EN to heading 3702, HTSUS, provides, in pertinent part:

This heading covers:

(A) **Photographic film in rolls, of any material other than paper, paperboard or textiles.**

Photographic film **in rolls** (i.e., other than flat), **sensitised, unexposed** is usually of poly(ethylene terephthalate), cellulose acetate or similar flexible materials and normally

provides for a number of exposures. The heading **does not cover** such film of paper (e.g., paper “films” used to make negatives), paperboard or textiles (**heading 37.03**).

Film in rolls falls in this heading with or without perforations; it must be protected from the light by paper backing or other suitable packing...

Like the photographic plates of heading 37.01, this film may be used for amateur, professional photomechanical, scientific, radiographic, etc., purposes. X-ray film in rolls is generally sensitised on both sides.

The EN to heading 8443, HTSUS, provides, in pertinent part:

This heading covers (1) all machines used for printing by means of the plates or cylinders of the previous heading, and (2) other printers, copying machines and facsimile machines, whether or not combined.

The heading includes machines for printing a repetitive design, repetitive wording or overall colour on textiles, wallpaper, wrapping paper, rubber, plastics sheeting, linoleum, leather, etc....

## (II) OTHER PRINTERS, COPYING MACHINES AND FACSIMILE MACHINES, WHETHER OR NOT COMBINED

This group covers:

### (A) Printers.

This group includes apparatus for the printing of text, characters or images on print media, other than those that are described in Part (I) above.

These apparatus accept data from various sources (e.g., automatic data processing machines, flatbed desktop scanners, networks). Most incorporate memory to store that data.

The products of this heading may create the characters or images by means such as laser, ink-jet, dot matrix or thermal print processes....

## PARTS AND ACCESSORIES

**Subject** to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), the heading also covers parts and accessories of the machines of this heading.

In *QMS, Inc., v. United States*, 19 C.I.T. 551; 17 Int'l Trade Rep. (BNA) 1510; 1995 Ct. Intl. Trade LEXIS 104; SLIP OP. 95-65 (Ct. Int'l Trade 1995), the court examined the classification of color ink sheet rolls (“ISRs”), also known as thermal transfer ribbons in the trade. See *QMS, Inc., v. United States*, 19 C.I.T. 551, 552 (“*QMS*”). These ISRs were specially designed for use solely in color thermal transfer printers, which were used to print graphics with *automatic* data processing equipment. The printers could not function as intended without color ISRs. *Id.* at 551. In their condition as

imported, the ISRs consisted of a thin polymer (*i.e.*, plastic) film to which had been applied paraffin wax pigments (or “inks”) in varying color configurations (*i.e.*, yellow, magenta, cyan, and black). *Id.* at 551. The ISRs, which were tightly wound around a reinforced cardboard core, varied in size, depending on the color thermal transfer printers for which they were specially designed. *Id.* at 551–552.

The *QMS* court first considered classification in heading 9612, HTSUS, as typewriters or similar ribbons, and found that the subject ISRs were not typewriter or similar ribbons. *Id.* at 556. The court reasoned that the thermal transfer ribbon at issue was not similar to typewriter ribbons because of the differences in physical characteristics and purposes of the two sets of merchandise. *Id.* at 559–560. As a result, the court found that the subject ISRs could not be classified in heading 9612, HTSUS. *Id.* at 560.

Next, the court considered classification in heading 8473, HTSUS, as parts and accessories suitable for use solely or principally with machines of headings 8469 to 8472, HTSUS. The court did not determine whether the subject ISRs fit the established definitions of parts or accessories. *Id.* at 561. Rather, the court reasoned that, even assuming the subject ISRs fit these definitions, the GRIs required that, where goods were, *prima facie*, classifiable under two or more headings, the heading which provides the most specific description shall be preferred to headings providing a more general description. Thus, under the authority of GRI 3(a), the court found that the ISRs were more specifically provided for in heading 3702, HTSUS, and specifically in sub-heading 3702.44, HTSUS, as “Photographic film in rolls, sensitized, unexposed, of any material other than paper, paperboard or textiles; instant print film in rolls, sensitized, unexposed: Other film, without sprocket holes, of a width exceeding 105 mm: Of a width exceeding 105 mm but not exceeding 610 mm.” *Id.* at 561.

The merchandise at issue in *QMS* consisted of rolls of thermal transfer ribbon. It is not in dispute that merchandise imported in this form is classified in heading 3702, HTSUS. In the present case, NY N022500 describes its merchandise as “thermal transfer ribbons” more than once. This description led CBP to conclude that the merchandise was imported as rolls of thermal transfer ribbon. Our analysis in the proposed revocation of NY N022500 reflected this conclusion; there, we classified the subject merchandise as thermal transfer ribbons of heading 3702, HTSUS, in accordance with *QMS*.

However, the comment CBP received in opposition to the revocation came from the importer whose merchandise was at issue in NY N022500. In its comment, the importer noted that the spools of thermal transfer ribbon are admitted into an FTZ, where they are assembled into a cartridge consisting of two feed spools, geared and non-geared flanges and an RFID chip which communicates information to the printer. The commenter argues that when the subject merchandise is withdrawn from the FTZ, it is not simply the long rolls of thermal transfer ribbon, but rather is a completed printer component containing significant mechanical components. The commenter argues that these mechanical components make the subject merchandise specifically designed for certain printers, and therefore classified in heading 8443, HTSUS, as parts of a printer.

The classification of articles entered from an FTZ is, in part, dependent upon whether the articles have Privileged Foreign Status (PF) or Non-Privileged Foreign Status (NPF). There is no indication that the subject merchandise is entered under PF status. Under Section 146.65(a)(2) of the CBP Regulations (19 CFR 146.65(a)(2)), NPF status merchandise is “[s]ubject to tariff classification in accordance with its character, condition and quantity as constructively transferred to customs territory at the time of entry or when an entry summary is filed with [CBP].” NPF status is a residual status which applies to foreign merchandise which does not have the status of privileged foreign merchandise or zone-restricted merchandise. See 19 C.F.R. §146.42 (a). For NPF status merchandise, classification is based on the product that is withdrawn from the FTZ, not based on the form in which it is admitted to the FTZ. See, e.g., HQ H103166, dated July 26, 2010. Provided that the PET film and components are in NPF status, upon withdrawal from the FTZ, they are classified as finished printer cartridges, we agree with the commenter that the subject merchandise is classified in heading 8443, HTSUS, as parts for printing machinery.

In *Mita Copystar America v. United States*, 160 F.3d 710; 1998 U.S. App. Lexis 28195; 20 Int’l Trade Rep. (BNA) 1707 (CAFC 1998), the court classified toner cartridges that were shaped to fit into specific electrostatic photocopiers. *Mita Copystar America v. United States*, 160 F.3d 710. These cartridges had been liquidated in heading 3707, HTSUS, as chemical preparations for photographic use. *Id.* at 711. The court found that the toner cartridges were parts of the printers because the cartridges were sold with toner inside, they remained with the toner throughout its use by the photocopier, they were the standard device for providing toner to the photocopier, and they were not designed for reuse. *Id.* at 712–713. See also *Brother International Corp. v. United States*, 26 C.I.T. 867; 248 F.Supp. 2d 1224; 24 Int’l Trade Rep (BNA) 1817; 2002 Ct. Intl. Trade Lexis 74; Clip Op. 2002–80 (2002). The merchandise at issue in *Mita Copystar* is similar to the subject merchandise in that the thermal transfer ribbon remains in the cartridges, are the standard device for providing dye to the printer, and are not designed for reuse. Furthermore, they are designed exclusively for use with thermal printers and are sold for use only with these printers, which could not function without these cartridges. Hence, they are classified in heading 8443, HTSUS, as a part of printing machinery.

Given the discrepancy between the description of the merchandise in NY N022500, and the actual description of the subject merchandise as withdrawn from the FTZ, we hereby modify NY N022500 to clarify that the subject merchandise is withdrawn as finished printer cartridges, not as rolls of thermal transfer ribbon.

#### **HOLDING:**

Under the authority of GRI 1, the subject printer cartridges are classified in heading 8443, HTSUS. Specifically, if imported in a width not exceeding 105 mm, they are classified in subheading 8443.99.25, HTSUS, which provides for “Printing machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and ac-

cessories thereof: Parts and accessories: Other: Parts and accessories of printers: Other.” The 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 internet at *www.usitc.gov/tata/hts/*.

**EFFECT ON OTHER RULINGS:**

NY N022500, dated February 11, 2008, is MODIFIED with respect to the description of its merchandise.

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

*Sincerely,  
for*

MYLES B. HARMON,  
*Director*

*Commercial and Trade Facilitation Division*

**AGENCY INFORMATION COLLECTION ACTIVITIES:**

**Trusted Traveler Programs and U.S. APEC Business Travel Card**

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

**ACTION:** 60-Day notice and request for comments; extension of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Trusted Traveler Programs and U.S. APEC Business Travel Card. 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.

**DATES:** Written comments should be received on or before October 20, 2014 to be assured of consideration.

**ADDRESSES:** Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S.

Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229-1177, at 202-325-0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13; 44 U.S.C. 3507). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

**Title:** Trusted Traveler Programs and U.S. APEC Business Travel Card.

**OMB Number:** 1651-0121.

**Form Number:** 823S (SENTRI) and 823F (FAST).

**Abstract:** This collection of information is for CBP's Trusted Traveler Programs, including the Secure Electronic Network for Travelers Rapid Inspection (SENTRI), which allows expedited entry at specified land border ports of entry along the U.S.-Mexico border; the Free and Secure Trade (FAST) Program, which provides expedited border processing for known, low-risk commercial drivers; and Global Entry, which allows pre-approved, low-risk air travelers expedited clearance upon arrival into the United States.

The purpose of all of these programs is to provide prescreened travelers expedited entry into the United States. The benefit to the traveler is less time spent in line waiting to be processed. These Trusted Traveler Programs are provided for in 8 CFR 235.7 and 235.12.

This information collection also includes the U.S. Asia-Pacific Economic Cooperation (APEC) Business Travel Card (ABTC) Program, which is a voluntary program that allows U.S. citizens to use fast-

track immigration lanes at airports in the 20 other APEC member countries. This program is mandated by the Asia-Pacific Economic Cooperation Business Travel Cards Act of 2011, Public Law 112-54, and provided for by 8 CFR 235.13 and 8 CFR 103.7(b)(1)(ii)(N).

The data is collected on the applications and kiosks for the Trusted Traveler Programs. Applicants may apply to participate in these programs by using the Global On-line Enrollment System (GOES) at <https://goes-app.cbp.dhs.gov>. Applicants may also apply for SENTRI and FAST using paper forms (CBP Form 823S for SENTRI and CBP Form 823F for FAST) available at <http://www.cbp.gov> or at Trusted Traveler Enrollment Centers.

After arriving at the Federal Inspection Services area of the airport, participants in Global Entry can undergo a self-service inspection process using a Global Entry kiosk. During the self-service inspection, participants have their photograph and fingerprints taken, submit identifying information, and answer several questions about items they are bringing into the United States. When using the Global Entry kiosks, participants are required to declare all articles being brought into the United States pursuant to 19 CFR 148.11.

**Current Actions:** This submission is being made to extend the expiration date with no change to the burden hours. There are no changes to the information collected.

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

**Affected Public:** Individuals and Businesses.

#### **SENTRI (Form 823S)**

**Estimated Number of Annual Respondents:** 46,000.

**Estimated Number of Total Annual Responses:** 46,000.

**Estimated Time per Response:** 40 minutes.

**Estimated Total Annual Burden Hours:** 30,820.

**Estimated Annual Costs:** \$5,623,500

#### **FAST (Form 823F)**

**Estimated Number of Annual Respondents:** 28,910.

**Estimated Number of Total Annual Responses:** 28,910.

**Estimated Time per Response:** 40 minutes.

**Estimated Total Annual Burden Hours:** 19,370.

**Estimated Annual Costs:** \$1,445,500.

### **Global Entry**

**Estimated Number of Annual Respondents:** 630,125.  
**Estimated Number of Total Annual Responses:** 630,125.  
**Estimated Time per Response:** 40 minutes.  
**Estimated Total Annual Burden Hours:** 422,184.  
**Estimated Annual Costs:** \$63,012,500.

### **ABTC**

**Estimated Number of Annual Respondents:** 4,250.  
**Estimated Number of Total Annual Responses:** 4,250.  
**Estimated Time per Response:** 10 minutes.  
**Estimated Total Annual Burden Hours:** 723.  
**Estimated Annual Costs:** \$297,500.

### **Global Entry Kiosks**

**Estimated Number of Annual Respondents:** 2,200,000.  
**Estimated Number of Total Annual Responses:** 2,200,000.  
**Estimated Time per Response:** 1 minute.  
**Estimated Total Annual Burden Hours:** 35,200.

Dated: August 18, 2014.

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

[Published in the Federal Register, August 21, 2014 (79 FR 49529)]

