

*What Every Member of the
Trade Community Should Know About:*

Vending Machines and Their Parts Under the HTSUS



AN INFORMED COMPLIANCE PUBLICATION

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U.S. CUSTOMS and BORDER PROTECTION

NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “informed compliance” and “shared responsibility,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

Regulations and Rulings (RR) of the Office of International Trade has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the National Commodity Specialist Division of Regulations and Rulings is entitled “Vending Machines and Their Parts Under the HTSUS”. It provides guidance regarding the classification of these items. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant.

Comments and suggestions are welcomed and should be addressed to the Executive Director, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

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INTRODUCTION TO THE CLASSIFICATION OF VENDING MACHINES

Use the term “vending machine” and nostalgic thoughts of the local automat restaurant or vintage soda pop machines spring into some people’s minds. In the United States, the vending industry can be said to have begun in 1888 with the installation of gum vending machines on New York City’s elevated train platforms.¹ Vending machines of the past were mostly for food products. But times have changed.

Today, there is hardly any product that cannot be sold via vending machines. Reports on the latest vending machines have even reached the point where they appear on national television broadcasts and in the daily newspapers. The “Shop 2000,” an automated convenience store, is basically a vending machine capable of stocking approximately 200 products. It attracted so much attention that an article on its installation in Washington, DC, appeared in *The New York Times*.²

The following information will provide the reader with some basic guidelines for classifying vending machines under the Harmonized Tariff Schedule of the United States (HTSUS). It ranges from general to specific information that may prove helpful when faced with the task of determining which HTSUS provision is to be applied to a particular vending machine. It should be noted however that this data is not all-inclusive. Other material such as Office of Regulations and Rulings Headquarters (“HQ”) and New York (“NY”) Customs rulings, court decisions and product specific material (e.g., schematics, drawings, invoices, etc.) should also be used in conjunction with the tools cited below to arrive at the proper classification.

CLASSIFICATION TOOLS

Harmonized Tariff Schedule of the United States (“HTSUS”) – For legal purposes, vending machines, as with all imported merchandise, are to be classified in accordance with the terms of the headings of the HTSUS, any relative section and chapter notes and, provided such headings or notes do not require otherwise, in accordance with the General Rules of Interpretation (“GRIs”) taken in order. (See GRI 1.)

Harmonized Commodity Description and Coding System Explanatory Notes (ENs or Explanatory Notes) – These notes are the official interpretation of the Harmonized System (“HS”) at the international level. The ENs are not dispositive nor are they legally binding; however, they do provide commentary on the scope of each heading of the Harmonized System. [See T.D. 89-80, published in the *Federal Register* August 23, 1989 (54 FR 35127, 35128)].

¹ “vending machine” *Encyclopaedia Britannica* from Encyclopaedia Britannica Online
<http://search.eb.com/eb/article?eu=76966>
[Accessed January 13, 2003]

² Tierney, John, “Shop Till Eggs, Diapers, Toothpaste Drop”, *The New York Times*, Vol. CLI. No.52,224; Wednesday, August 28, 2002, pp. A1 and A17

* * * * *

The Merriam-Webster's Collegiate® Dictionary, Tenth Edition, provides the following information on the term "vend": "Etymology: Latin *vendere* to sell, v.t., contraction for *venum dare* to give for sale." Customs Headquarters went on to state in HQ 962415 dated February 22, 2000 that:

The term "vend" is defined in *Webster's II New Riverside University Dictionary* 1280 (1988) as "--vt. 1. To sell. 2. To offer (e.g., an idea) for public consideration. --vt. 1. a. To sell goods. b. To sell by means of a vending machine".

Heading 8476, HTSUS, provides for vending machines as follows:

- 8476 Automatic goods-vending machines (for example, postage stamp, cigarette, food or beverage machines), including money-changing machines; parts thereof:
 - Automatic beverage-vending machines:
 - 8476.21.00 Incorporating heating or refrigerating devices
 - 8476.29.00 Other
 - Other machines:
 - 8476.81.00 Incorporating heating or refrigerating devices
 - 8476.89.00 Other
 - 8476.90.00 Parts

The provision covers machines equipped with heating or refrigerating devices provided the principal function and purpose of the model is the automatic sale of the product. It should be noted that the heading also encompasses automatic vending mechanisms of the kind to be built into shop fronts.

Thus, it follows that a vending machine **must** supply a product (not a service) in exchange for a payment in order for that machine to be classified in heading 8476, HTSUS.

HISTORICAL NOTE

For ease of reference when consulting rulings, etc., the following is a history of the changes to the numerical designations of heading 8476 from the implementation of the HTSUS in 1989 to the present:

1/01/89 to 12/31/95	8476.11.0000	Automatic goods vending machines incorporating heating or refrigerating devices
	8476.19.0000	Automatic goods vending machines: Other
	8476.90.0000	Parts
1/01/96 to Present	8476.21.0000	Automatic beverage-vending machines: Incorporating heating or refrigerating devices
	8476.29.0000	Automatic beverage-vending machines: Other
	8476.81.0000	Other machines: Incorporating heating or refrigerating devices
	8476.89.0000	<i>Other machines: Other</i>
	8476.90.0000	Parts

EXCLUSIONS

All relevant section and chapter notes must be considered before the proper classification of the imported article in question can be determined. In the interest of brevity, this paper will deal only with the exclusionary notes that figure in the classification of vending machines and their parts.

Excluded by Virtue of Section/Chapter Notes

Note 1(g) to Section XVI states that Section XVI (which encompasses heading 8476, HTSUS,) does not cover “Parts of general use, as defined in note 2 to section XV, of base metal (section XV), or similar goods of plastics (chapter 39).”

Example:

Self-adhesive printed plastic decals imported separately and used on vending machines for (1) identification purposes (e.g., to identify the products available for sale in that particular vending machine) or (2)

instructive or safety purposes (e.g., warning labels alerting users to electrical hazards) are examples of such goods.

Self-adhesive printed plastic decals would be considered similar goods of plastics to articles of heading 8310, HTSUS. Thus, they would also be considered parts of general use and classified in heading 3919, HTSUS, which provides for self-adhesive plates, sheets, film foil, tape, strip and other flat shapes, of plastics, whether or not in rolls.

Note 1(l) to Section XVI provides that Section XVI does not cover articles of Section XVII, HTSUS, which provides for vehicles, aircraft, vessels and associated transport equipment.

Example:

An armored mobile banking facility is classified under subheading 8705.90.0000, HTSUS, which provides for special purpose motor vehicles, other than those principally designed for the transport of persons or goods, other. This vehicle is not designed as a transportation truck but rather as a mobile Automated Teller Machine ("ATM"). Although there is an exchange of one or more forms of monetary exchange (currency, electronic cards, etc.), the user is receiving a service not a product. (See NY 867574, October 17, 1991.) (Also see ATMs below.)

Note 1(m) to Section XVI provides that Section XVI does not cover articles of chapter 90, HTSUS, which provides for optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories.

Examples:

- (1) Bill acceptors imported separately which are designed, by means of multiple optical and magnetic sensors, to scan, accept and reject paper currency ("bills") are the subject of HQ 964467 dated December 1, 2000. These devices reject mutilated or counterfeit paper currency. In the cited ruling, HQ held that the bill acceptors are optical checking instruments within the scope of heading 9031, HTSUS, which provides for measuring or checking instruments, appliances and machines, not specified or included elsewhere in chapter 90, HTSUS.
- (2) Photo booths which produce individual photographs on a vertical strip in either color or black and white are the subject of HQ 955834 dated April 4, 1994. Said ruling states in part that "Although the photo booths are vending machines which supply a product for money, classification under heading 8476, HTSUS, is precluded by application of EN 84.76 because the subject merchandise contains a fixed focus camera. ... Fixed focus

cameras are provided for in chapter 90". The photo booths were thus excluded from classification under heading 8476, HTSUS, by virtue of note 1(m) to section XVI. Photo booths utilizing fixed focus cameras are classified in subheading 9006.59.40, HTSUS, which provides for photographic (other than cinematographic) cameras...: other cameras: other: fixed focus.

With regard to photo booths, one must be careful to distinguish booths which employ fixed focus cameras from those that use digital cameras or CCD color video cameras to produce the photographs. As digital and CCD color video cameras are not provided for in chapter 90, note 1(m) to section XVI would not apply. Photo booths which do not use fixed focus photographic cameras are classified in subheading 8476.89.00, HTSUS.

Example:

Free-standing units for the vending of sheets of personalized stickers are available for use in conspicuous public places such as stores. The customer deposits the appropriate monetary amount and selects a border and/or brief message to appear on the stickers. A CCD color video camera takes the customer's picture. The unit then prints and dispenses a sheet of stickers which contain the customer's photo. This type of unit is classified in subheading 8476.89.00, HTSUS. (See NY C81390, November 21, 1997.) (Also see NY E89690, December 1, 1999 re similar photo sticker vending machine.)

Note 1(n) to Section XVI provides that Section XVI does not cover articles of chapter 91, HTSUS, which provides for clocks and watches and parts.

Example:

A coin-operated parking meter of subheading 9106.20.00, HTSUS, which provides for time of day recording apparatus and apparatus for measuring, recording or otherwise indicating intervals of time, with a clock or watch movement or with a synchronous motor (for example, time registers, time-recorders) would be excluded from coverage in Chapter 84. (See NY 806722, February 23, 1995.)

Note 1(p) to Section XVI provides that Section XVI does not cover articles of chapter 95, HTSUS, which provides for toys, games and sports equipment; parts and accessories.

Examples:

(1) A game used primarily for the amusement and entertainment of children and permanently located in chain restaurants is classified under subheading 9504.30.00, HTSUS, which provides for articles for

arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof: other games, operated by coins, banknotes (paper currency), discs or other similar articles, other than bowling alley equipment; parts and accessories thereof. (See NY A86779, August 26, 1996.)

- (2) Chapter 95 also encompasses coin-operated kiddie rides of the type primarily found at locations such as retail stores. The insertion of a coin activates a motor which creates a moving sensation for a preset amount of time. These rides which are used for recreational amusement are classified under heading 9508, HTSUS, which provides for merry-go-rounds, boat-swings, shooting galleries and other fairground amusements; traveling circuses and traveling menageries; traveling theaters; parts and accessories thereof. (See NY 815469, October 10, 1995; NY A81666, March 28, 1996.)

Precluded from Classification in Heading 8476, HTSUS, by Virtue of ENs' Exclusionary Language

The mere fact that a machine dispenses a product or contains a coin-operated device does not necessarily imply that the machine is a "vending machine" for Customs purposes. Articles specifically precluded from classification in heading 8476, HTSUS, by virtue of the exclusionary language are found in EN 84.76, HTSUS.

EN 84.76 provides:

- (a) *Coin-operated locks (e.g., for cupboards or public lavatories) (**heading 83.01**).*
- (b) *Pumps for dispensing fuel or lubricants, of the type used in filling-stations or in garages (**heading 84.13**).*
- (c) *Weighing machines (**heading 84.23**).*
- (d) *Typewriters (**heading 84.69**).*
- (e) *Coin-operated shoe brushing machines (**heading 84.79**).*
- (f) *Electric shavers (**heading 85.10**).*
- (g) *Telephone apparatus (**heading 85.17**).*
- (h) *Television receivers (**heading 85.28**).*
- (ij) *Telescopes, cameras, cinematograph projectors (**Chapter 90**).*
- (k) *Gas or electricity supply meters (**heading 90.28**).*
- (l) *Games of skill or chance (**heading 95.04**) and other machines of **Chapter 95**.*

In several instances, an item mentioned above can be found described in an explanatory note to a specific heading other than heading 8476, HTSUS.

Examples:

Coin-operated shoe brushing machines are referred to in EN 84.79(III)(27).

Certain observation telescopes that incorporate a device so that they can be used only after the insertion of a coin are mentioned in EN 90.05(2).

With regard to note (g)/telephone apparatus, it should be noted that this exclusion would **not** exclude a phone card vending machine where phone cards of varying amounts are dispensed upon the insertion into a slot of a coin, token, magnetic card, etc. The phone card vending machine would be classified under heading 8476, HTSUS.

Articles listed as item (l) have been discussed previously in this publication. See discussion of note 1(p) to section XVI.

Other Pertinent Exclusionary Language Found in the ENs

Heading 8424, HTSUS, provides for mechanical appliances (whether or not hand operated) for projecting, dispersing or spraying liquids or powders; fire extinguishers, whether or not charged; spray guns and similar appliances; steam or sand blasting machines and similar jet projecting machines; parts thereof. Exclusionary note (f) to EN 84.24 states that automatic vending machines of the scent spraying type provided for in heading 8476, HTSUS, are excluded from classification under heading 8424, HTSUS.

Heading 8470, HTSUS, provides for calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers. This heading encompasses machines used to issue tickets (e.g., cinema or railway tickets). These machines record and total the amounts involved while issuing the tickets. Note (D) to EN 84.70, HTSUS, states that "Machines which only count the tickets, etc., issued, without totaling the amounts, are **excluded (heading 8472, or, if coin-operated, heading 8476).**" (See NY H87075, January 16, 2002/Lottery Ticket Machine.)

Heading 8472, HTSUS provides for other office machines such as automatic banknote dispensers, coin-sorting machines and coin-counting or wrapping machines. This heading provides for certain ticket-issuing machines other than those incorporating a calculating device (see previous comments on heading 8470, HTSUS) and coin-operated machines of heading 8476, HTSUS.

CONFUSING TERMINOLOGY

Reverse Vending

Just because a unit's description includes the word "vending" does not automatically mean that the unit is to be classified in heading 8476, HTSUS.

Reverse vending machine:

This container reclaiming machine is for use in supermarkets and other beverage container return centers. As the cans are deposited in this unit, they are scanned in order to calculate the number of cans deposited. A complete receipt is printed out for the depositor and the cans are compacted. The collecting and compacting functions have been determined to be subsidiary to the receipt-issuing and calculating functions. The principal function of the reverse vending machine is as a calculating device for determining the amount of a receipt, and as a ticket-issuing machine. The reverse vending machine is classified under subheading 8470.90.01, HTSUS, which provides for other ticket-issuing machines incorporating a calculating device. (See NY 854788, July 31, 1990.)

OTHER ISSUES

Assembled vs. Disassembled

Classification of goods under the Harmonized Tariff Schedule of the United States is governed by the General Rules of Interpretation (GRI's). GRI 2(a) provides that:

Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), entered unassembled or disassembled.

Example:

Card Vending machines

Assembled --

A free-standing machine which accepts coins, bills or a credit card for payment in exchange for which it prints small quantities of business cards, invitations, or similar small cards. It is intended for installation at conference and exhibition centers, airports, print shops, and similar locations (See NY 866395, September 11, 1991.) (Also see NY 890602, October 15, 1993 re similar card vending machine.)

Disassembled --

Same type of unit as above except that at time of importation, components are disassembled (note while disassembled, all pieces necessary for one machine are present). All disassembled components are shipped in one crate. Importer re-assembles it at his facility and ships it to its final location. (See NY 866780, October 7, 1991.)

Complete machines (assembled and disassembled) are classified in subheading 8476.89.00, HTSUS.

Dispense vs. Vend

The function of dispensing is not encompassed by the terms of heading 8476, HTSUS. The term "vend" by its very nature implies that there is a sale or purchase of an article whereas the term "dispense" implies an article is being distributed without charge. There is no "sale" involved.

Examples of machines which dispense rather than vend:

Currency Dispenser

Automated Teller Machines ("ATMs") which upon the insertion of a magnetic strip card will perform a desired banking service such as the dispensing of currency. The unit is classified under subheading 8472.90.10, HTSUS, which provides for other office machines (for example, hectograph or stencil duplicating machines, addressing machines, automatic banknote dispensers, coin-sorting machines, coin-counting or wrapping machines, pencil-sharpening machines, perforating or stapling machines): other: automatic teller machines. (See NY B87579, July 23, 1997.)

Ice Cream Dispensers

- (1) An ice cream mixing machine is designed to be used in a retail establishment such as an ice cream parlor. The unit features a mixing device, multiple trays holding various candy products and display panels indicating the types of candy available. The customer selects the candy ingredients he/she wishes to have mixed with ice cream or yogurt. As the unit does not operate by means of coins, tokens or magnetic cards, classification under heading 8476, HTSUS, is precluded. The unit is classified under subheading 8438.80.00, HTSUS, as machinery, not specified or included elsewhere in this chapter, for the industrial preparation or manufacture of food or drink. (See HQ 082329, January 24, 1990.)
- (2) An electrically powered self-serve dispenser is designed for use in retail establishments to dispense individually packaged containers of soft ice cream. The unit does not incorporate any mechanism for payment. The

unit is classified under subheading 8479.89.6500, HTSUS, which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere (in Chapter 84): other machines and mechanical appliances: other: electromechanical appliances with self-contained electric motor: other. (See NY G87691, March 28, 2001.)

Information Dispensers

This free-standing floor unit is for use in video arcades and similar areas. When the proper amount of coins is inserted into the machine's coin mechanism, the machine displays various types of information on two display lines located at the top of the machine. The two liquid crystal display lines are capable of displaying up to 40 characters per line, e.g., the horoscope machine displays the person's horoscope. Optional features include a printer mechanism which dispenses the displayed information on a printed ticket. (See NY 856362, October 03, 1990.)

Units of this type dispense information rather than products. As heading 8476, HTSUS, is limited to machines which, upon payment, supply some kind of merchandise, these machines are not classifiable in heading 8476, HTSUS. This particular information dispenser was classified in heading 8479, HTSUS, which provides for other machines and mechanical appliances having individual functions, not specified or included elsewhere.

Key Dispenser

In this instance, the computerized key control machine is about the size of a beverage vending machine. It features a motor-driven rotary storage rack holding keys in individual storage compartments. It is for use in establishments where large numbers of keys are used. An authorized user uses a keyboard to enter an access number and required information (such as name/telephone number). After verification of the data, the storage rack rotates, the bin access door unlocks and the user is given access to the appropriate storage compartment. The key control machine would not be considered a vending machine. While a product, i.e., a key, is being supplied to the user, no payment is involved. It is classified in heading 8479, HTSUS. (See NY 859358, February 1, 1991.)

Medication Automated Distribution System

These systems are used by medical personnel in health care facilities to dispense medications to patients. Access to the system is by an assigned password and/or proper magnetic card key. Once an order is selected, the medication is dispensed and an automatic record and bill is created. There is no **sale** of the medications. The drugs are dispensed to a third party, i.e., the medical personnel. This third party neither purchases the medication nor is the consumer of the medication. In addition, these systems are located in restricted areas rather than high traffic areas

typical of a vending machine. As such, these systems would not meet the definition of “vending” as previously set forth in this publication. These systems are classified in subheading 8479.89.98, HTSUS. (See HQ 962415, February 22, 2000.)

Towel Dispensing Machine

This unit is intended for use in restaurants, restrooms and similar areas. The wall-mounted cabinet holds a roll of disposable toweling and a water reservoir which is electrically heated. When the user pushes a button, the towel material is automatically unwound, sprayed with hot water, cut into a predetermined length and ejected from the unit. This type of unit is classified under subheading 8479.89.65, HTSUS, which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere (in chapter 84): other machines and mechanical appliances: other: electromechanical appliances with self-contained electric motor: other. (See NY H82194, June 26, 2001.)

Service versus Product

A machine is excluded from classification in heading 8476 when it provides a service rather than a product in exchange for a monetary payment.

Examples of coin-operated machines that provide a service are:

Bathrooms (Chapter 94, HTSUS)

These self-contained public bathrooms are designed to be placed on city streets, public parks and various commercial facilities. The units incorporate various systems such as cleaning devices, driers, soap dispensers, etc. The automatic doors open when the user inserts the appropriate monetary amount in the slot. The self-contained public bathrooms are classifiable under subheading 9406.00.80, HTSUS, which provides for other prefabricated buildings. (See HQ 956637, August 29, 1994 which affirmed NY 895112, March 24, 1994.)

Drying machines (coin-operated) of subheading 8451.21.0010, HTSUS

This subheading provides for machinery (other than machines of heading 8450) for washing, cleaning, wringing, drying, ironing, pressing (including fusing presses), bleaching, dyeing, dressing, finishing, coating or impregnating textile yarns, fabrics or made up textile articles and machines for applying the paste to the base fabric or other support used in the manufacture of floor coverings such as linoleum; machines for reeling, unreeling, folding, cutting or pinking textile fabrics; parts thereof: drying machines: each of a dry linen capacity not exceeding 10 kg, coin operated.

Games and kiddie rides (Chapter 95, HTSUS)

- (1) Coin (or token) operated game machines used primarily for the amusement and entertainment of children, usually located in high traffic areas such as restaurants, are classified in subheading 9504.30.00, HTSUS, which provides for articles for arcade, table or parlor games, including pinball machines, ... parts and accessories thereof: other games, coin- or token-operated, other than bowling alley equipment; parts and accessories thereof...games: other. (See NY A86779, August 26, 1996.)
- (2) Coin-operated rides which provide amusement and entertainment come set to standard ride cycles. In some instances, they can also feature a camera/printer system which photographs and prints an image of the user(s) on the amusement ride. Amusement rides of this type are classified in heading 9508, HTSUS, which provides for merry-go-rounds, boat-swings, shooting galleries and other fairground amusements. (See NY A86777, August 22, 1996.)

Jukeboxes

A coin-operated jukebox which provides entertainment by playing digital music stored on a hard drive within the unit (rather than records or discs) is classified under subheading 8519.20.00, HTSUS, which provides for Apparatus operated by coins, banknotes, bank cards, tokens or by other means of payment. (See NY F80304, December 8, 1999.)

Payphones

Payphones, which provide telecommunication service (the transmission of speech or other sounds between two points) are classified in heading 8517, HTSUS, which provides for telephone sets, including telephones for cellular networks or for other wireless networks; other apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network), other than transmission or reception apparatus of heading 8443, 8525, 8527 or 8528; parts thereof.

Timing control

Coin-operated device of this type provides a service whereby an individual is allowed the use of a facility such as a squash court. The number of coins deposited dictates the amount of time allotted to the customer. The device is classified in subheading 9107.00.80, HTSUS, which provides for time switches with watch or clock movement or with synchronous motor: valued over \$5 each. (See NY 831344, September 6, 1988.)

Washing machines (coin operated) of subheading 8450.11.0010, HTSUS, Subheading 8450.11.0010, HTSUS provides for household - or laundry - type washing machines, including machines which both wash and dry;

parts thereof: machines, each of a dry linen capacity not exceeding 10 kg:
fully automatic machines, coin operated.

Examples of other machines (i.e., those that are not coin-operated) which provide a service are:

Automated Teller Machines (“ATMs”)

ATMs provide banking services upon the insertion of a magnetic strip card. ATMs are classified under subheading 8472.90.10, HTSUS. (See above “Dispense vs. Vend”/Currency Dispenser.)

Garment Retrieval System

This system is designed for use in dry cleaning establishments. It provides the convenience of being able to pick up cleaned garments twenty-four hours a day. When the customer brings in his/her garments, his/her credit card is scanned by a bar code reader. Garment data (quantity, price and type of cleaning) is manually entered into the control system by the clerk. The customer receives a receipt and each garment receives a bar coded identification marker. After cleaning, the garments are bagged and hung in a compartment on a conveyor. The garment's conveyor position is input into the control system. When the customer returns to pick up his/her garments, he/she inserts his/her credit card into a reader in the establishment's automatic door. After the data is scanned, the control system sends a signal to the conveyor so that the appropriate garment can be conveyed to the extractor unit. As soon as the window in the automatic door is lowered, the customer can reach in and retrieve his/her garments.

In this instance, the customer was paying for a service, i.e., the cleaning of the garments, not for a product. Classification of this automatic retrieval system in heading 8476, HTSUS, as a vending machine is precluded. The system is classified under subheading 8479.89.98, HTSUS, which provides for machines and mechanical appliances having individual functions, not specified or included elsewhere (in chapter 84): other machines and mechanical appliances: other: other: other: other. (See NY C86945, May 15, 1998.)

Presence/Use of Coin Mechanism as Factor in Determining Classification:

For Customs purposes, a vending machine must possess the capability of accepting some form of payment for the product being dispensed. If, in its imported condition, the machine does not contain a payment mechanism, it lacks the essential character of a vending machine. In that instance, heading 8476, HTSUS, would not be applicable.

Example:

Espresso machine imported and sold with payment mechanism classified in heading 8476, HTSUS.

Espresso machine (apart from the electric domestic espresso machines of heading 8516) imported and sold without payment mechanism classified in heading 8419, HTSUS, which provides for other machinery, plant or equipment for cooking or heating food, of a type used in restaurants, hotels and similar locations. Machine is fully operational without the payment mechanism. As it lacks the essential character of a vending machine, i.e., the payment mechanism, it cannot be considered an “incomplete” vending machine for HTSUS classification purposes.

However, the reader is reminded that the presence of a coin mechanism does not mean necessarily that the article is a vending machine, e.g., washing machine coin mechanism (see discussion above).

Commercial vs. Household

While certain vending machines could be used in a home, vending machines are primarily, if not solely, of a kind not used for domestic purposes. Certain characteristics distinguish commercial from household machines. Features to consider include: (1) material of composition (e.g., steel), (2) type of lock (i.e., substantial rather than flimsy), (3) presence of coin mechanism indicating that payment is exchanged for a product and (4) unit comes equipped with a stand rather than being designed for countertop use. No one feature determines the nature of the machine. Article to be classified has to be analyzed as a whole, not piecemeal.

Examples:

Commercial candy/novelties vending machine

This stand-alone unit featured steel vending mechanisms and coin changers. An electronically alarmed steel door provided access to the money stored in the unit. The unit was to be placed in a conspicuous area such as a retail store or similar location. Due to its construction, size and location, the article was classified under heading 8476, HTSUS, as a vending machine. (NY 818425, February 13, 1996.) (Also see NY D89217, April 5, 1999 re similar machine.)

Household imitation vending machines

(1) An article, approximately 6 ½” inches in height, was manufactured in the form of a traditional gumball machine. It had a base which supported a clear plastic bubble-type top. The base incorporated a turning knob that allowed a product (other than snack food) to be dispensed. A slot was located at the back of the base. This allowed for use of the article as a coin bank. However, the dispensing portion of the article was

not coin-operated. Due to its construction, size and limited function, the article was classified under heading 9503, HTSUS, as other toys. (See NY F88661, July 26, 2000.)

- (2) An article, measuring approximately 13” high, was manufactured in the form of a traditional gumball machine. It had a cast aluminum body, a glass globe and a plastic base with tray. Coins were **not** needed for operation. It was used to dispense gum, nuts or candy. The article was classified under heading 7615, HTSUS, as table, kitchen or other household articles of aluminum. (See HQ 959750, November 25, 1997; NY A85113, July 3, 1996.)

Location

Vending machines of the type classifiable under heading 8476, HTSUS, are generally placed in conspicuous areas such as shopping malls, arenas, airports and similar high traffic locations.

For example, a commercial candy/novelties vending machine of the type described in NYRL 818425 dated February 13, 1996 is primarily found at high traffic locations such as retail stores.

Technological Advances

Modern vending machines are no longer limited to accepting payment in coin/currency. Units can now be adapted to accept payment by various methods such as credit card, debit card or dialup from a cell phone. Software has been developed that allows for remote monitoring of the machines. An off-site operator can monitor the mechanical operation of the machines while verifying inventory. These machines would be classified in the same provisions as their coin operated counterparts.

Through the use of an age verification system involving the swiping of both a credit card and a valid identification with a magnetic strip, a major tobacco corporation is testing a method to prevent minors from illegally purchasing cigarettes from vending machines. The model is presently being tested in various locations throughout the United States.³ In this instance such an age verification system would not preclude classification of the vending machine in heading 8476, HTSUS.

³ Associated Press. “Cigarette vending” Staten Island Advance August 7, 2002

TERMS COMMONLY USED IN VENDING INDUSTRY

Bill/Money Changers -- devices which feature coin deposit and banknote acceptor slots. Coins can be changed to banknotes, banknotes to coins or large denominations of banknotes changed into smaller denominations.

Bill Validators -- devices which, through the use of multiple optical and magnetic sensors, scan and accept or reject paper currency.

Coin Mechanism -- (used in conjunction with slug rejector) routes coins to their respective slots. Once the required amount of coins has been verified, vending process starts.

Column -- holds helix (see below) and product in place in vending machine.

Column Dividers -- separates product in column "a" from that in column "b", etc.

Helix -- spiral coil into which product is placed and which moves the product down during the vending process.

Slug Rejector -- used in conjunction with coin mechanism.

DISCUSSION OF SPECIFIC TARIFF PROVISIONS

Assuming a vending machine under consideration has not been excluded from heading 8476, HTSUS, by virtue of any of the above mentioned notes, the vending machine is classified in accordance with the language of heading 8476, HTSUS. Heading 8476, HTSUS, includes vending machines which are automatic (e.g., chosen product automatically supplied without any further action on the part of the consumer) or semi-automatic (e.g., unit verifies the payment/selection and releases the lock on the appropriate compartment, thus allowing the consumer to open the compartment for retrieval of his/her selection). The ENs to heading 8476, HTSUS, state that the heading also encompasses vending machines which include devices for preparing the product sold. However, care should be taken to verify that this preparation is secondary to the principal function of vending.

Automatic Beverage-Vending Machines: Incorporating Heating or Refrigerating Devices - Subheading 8476.21, HTSUS

This subheading is limited to vending machines incorporating heating or refrigerating devices which sell beverages. There is no restriction as to how the beverage is vended, e.g., in cups or cans (metal or plastic). Other forms of beverage packaging include bottles (glass or plastic), cartons and pouches.

Automatic Beverage-Vending Machines: Other - Subheading 8476.29, HTSUS

Machines classified in this subheading can be distinguished from those of subheading 8476.21, HTSUS, in that they **do not** incorporate heating or refrigerating devices.

Other Machines: Incorporating Heating or Refrigerating Devices - Subheading 8476.81, HTSUS

Vending machines of this heading are for the sale of products other than beverages. The units **must** incorporate heating or refrigerating devices.

Examples:

Hot Nut Vending Machine

Countertop or wall mounted vending machine dispenses heated nuts upon insertion/acceptance of required monetary amount. (See NY 866101, September 6, 1991.)

French Fry Vending Machine

After the customer inserts the appropriate monetary amount, this free-standing unit automatically cooks and dispenses french-fried potatoes in accordance with the customer's desired options (i.e., with ketchup, salt or other dressings). (See NY H84960, August 27, 2001.)

Other Machines: Other – Subheading 8476.89, HTSUS

Vending machines of this heading are for the sale of products other than beverages. The units **must not** incorporate heating or refrigerating devices.

Examples:

Golf Ball Vending Machine

After a customer inserts a magnetic card (encoded with a prepaid amount), the unit dispenses a specified number of golf balls. (NY A83974, June 12, 1996.)

Money-Changing Machines

The free-standing units feature coin deposit and banknote acceptor slots. The units are capable of changing coins to banknotes, banknotes to coins or large denominations of banknotes into smaller denominations. (See NY D80247, July 31, 1998.)

Videotape Vending System

Customer inserts a magnetic card upon which personal data and a prepaid monetary amount have been recorded into the stand-alone unit

and selects a videotape. The unit dispenses the videotape and deducts the appropriate fee from the magnetic card. (NY E81780, June 10, 1999.)

PARTS OF VENDING MACHINES - SUBHEADING 8476.90.00, HTSUS AND OTHER RELATED ARTICLES

The language of heading 8476, HTSUS, encompasses “parts of” as well as complete vending machines. However, even if an article is designed and dedicated for use solely or principally with a particular vending machine, it may not be classified as a “part” in subheading 8476.90, HTSUS. As the language provides **only** for “**parts of,**” accessories are to be classified elsewhere in the tariff schedule in their respective headings.

One first has to determine if the article under consideration is a “part” or an “accessory” for Customs purposes. The interpretation of these terms is a complex task. What follows is a rather simplistic overview of these terms as an in-depth study would warrant a separate publication.

There is no clearly stated Congressional intent as to the meaning of the tariff terms “part” and “accessory”. The terms “part” and “accessory” are not defined in either the tariff schedule or the Explanatory Notes. As noted in HQ 957207, February 9, 1995:

a tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meaning. Nippon Kogaku (USA) Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982).

The term “**a part of an article**” has generally been interpreted by Customs to mean “an internal, constituent or component part, without which the article to which it is joined could not function.”

Assuming sufficient evidence is provided establishing the article to be a bona fide part, the next step is to consider all relevant section and chapter notes. Particular attention should be paid to note 2 to section XVI which states that, subject to certain exclusions found in note 1 to section XVI, note 1 to chapter 84 and note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:

- (a) Parts which are goods included in any of the headings of chapters 84 and 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;

- (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate. However, parts which are equally suitable for use principally with the goods of headings 8517 and 8525 to 8528 are to be classified in heading 8517;
- (c) All other parts are to be classified in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate or, failing that, in heading 8487 or 8548.

One also has to consider the principle that a part of a part is more specifically provided for as a “part of a part” rather than as a “part of a whole”. For guidance in this matter, one can consult rulings such as HQ 964899 dated January 8, 2001 which states in part that:

In Mitsubishi Electronics America v. United States, 19 CIT 378, 383 n.3 (1995), the court stated:

The Court notes that if the subject merchandise is not a clutch, but rather a part of a starter motor, then it cannot be classified as part of an automobile, even though it is used solely in automobiles. This is because a subpart of a particular part of an article is more specifically provided for as a part of the part than as a part of the whole. C.F. Liebert v. United States, 60 Cust. Ct. 677, 686-87, 287 F. Supp. 1008, 1014 (1968) (holding that parts of clutches which are parts of winches are more specifically provided for as parts of clutches than as parts of winches).

In this instance, the clutch which is part of a starter motor is classified as part of the motor rather than part of the automobile in which it will be used.

(Also see HQ 956998, November 28, 1994; HQ 963325, September 15, 2000; NY G86626, February 2, 2001.)

The term “**accessory**” has been interpreted by HQ as:

... generally an article which is not necessary to enable the goods with which it is used to fulfill their intended function. An accessory must be identifiable as being intended solely or principally for use with a specific article. Accessories are of secondary or subordinate importance, not essential in and of themselves. They must, however, somehow contribute to the effectiveness of the principal article (e.g., facilitate the use or handling of the principal article, widen the range of its uses, or improve its operation.) (HQ 087704, September 27, 1990.)

Customs HQ also notes that "...Webster's Dictionary defines an accessory as an object or device that is not essential in itself but adds to the beauty, convenience, or effectiveness of something else." (See HQ 958710, dated April 8, 1996.)

[Also see *Rollerblade, Inc. v. U.S.* 116 F. Supp. 2d 1247 (CIT 2000), *aff'd*, 282 F. 3d 1349 (CAFC 2002); HQ 965401, April 22, 2002; HQ 964780, January 31, 2002; HQ 962730, April 15, 1999; HQ 958924, dated June 20, 1996; HQ 959366, September 3, 1996.]

The following are a few examples of articles relating to vending machines showing how they are classified in accordance with the Customs interpretations of the terms "part" and "accessory." The reader is reminded that the language of heading 8476, HTSUS, encompasses "parts" **only**.

Examples

Articles Classifiable in Heading 8476, HTSUS, by Virtue of Note 2(b) to Section XVI

Components such as the columns, column dividers and helixes (described above in the section on terminology) are classified as parts of vending machines in subheading 8476.90.00, HTSUS.

Articles Subject to Note 2(a) to Section XVI

Separately imported motors including motors with gears or gearboxes are classified in chapter 85.

Accessories

Separately imported cast iron pedestal stand for candy/gumball vending machines.

While the stand is designed to be used at the same time as the vending machine, it does not contribute to the function of the vending machine nor is it an integral part of the vending machine itself; thus it is precluded from classification as a part under heading 8476, HTSUS. The stand is classifiable under subheading 7325.99, HTSUS, other cast articles of iron or steel. (See NY B87572, July 17, 1997.)

Other Related Items

A product sold by a vending machine is not a part of such machine. When separately imported, a product is classified in its appropriate HTSUS heading. (For examples see NY D89217, April 5, 1999; NY E87596, October 13, 1999; HQ 956769, February 2, 1996; NY 806455, February 10, 1995.)

INVOICING

An invoice must contain complete and accurate information in order for the merchandise to be properly classified. Description should not consist merely of one term, e.g., vending machine. The reader is advised to consult 19 CFR 141.86, Customs Regulations, for general invoicing requirements. In addition, an invoice for a vending machine should state whether or not the unit incorporates a payment mechanism and heating and/or refrigerating devices. The type of goods to be vended by the machine (e.g., postage stamp, cigarette, food or beverage) should also be shown on the invoice.

CONCLUSION

Classification of goods is a complex task. By familiarizing oneself with the above basic guidelines as well as with the text of the HTSUS, including the GRI's, General notes and Section and Chapter notes, the reader should be able to make a correct classification determination for the imported vending machine. This will help ensure the proper assessment of duties and the collection of accurate import statistics by CBP.

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, the "Know Before You Go" publication and traveler awareness campaign is designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

Customs Regulations

The current edition of Customs and Border Protection Regulations of the United States is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound edition of Title 19, Code of Federal Regulations is also available for sale from the same address. All proposed and final regulations are published in the Federal Register, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the Federal Register may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly Customs Bulletin described below.

Customs Bulletin

The Customs Bulletin and Decisions ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the Customs Bulletin. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The current edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The current edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

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