

1

HQ H016491

October 1, 2007

BOR-4-07-OT:RR:BSTC:CCI H016491 JLB

CATEGORY: Carriers

Mr. George R. Tuttle, III

Law Offices of George R. Tuttle

One Embarcadero Center

Suite 730

San Francisco, CA 94111-4044

RE: Instruments of International Traffic; 19 U.S.C. 1322(a); 19 C.F.R. 10.41a

Dear Mr. Tuttle:

This is in response to your correspondence of August 22, 2007, in which you requested a ruling to classify plastic shipping containers designed to transport semiconductor wafers as "instruments of international traffic" pursuant to 19 U.S.C. 1322(a) and 19 C.F.R. 10.41a. Our ruling on your request follows.

FACTS

Spansion Inc. designs, develops, manufactures, markets and sells flash memory devices which require semiconductor wafers. The company manufactures these wafers at plants located in Austin, Texas and Japan. The company then exports the finished or partially finished wafers to its assembly and testing facilities in Thailand, Malaysia and China. Due to the fragile nature of the wafers and how expensive they are to manufacture, the finished integrated circuit wafers are packaged in reusable plastic shipping containers. A sample of the aforementioned container

1

was provided.

These containers, manufactured in Japan, consist of two parts with an interlocking top and bottom, made of Anti-Static Polypropylene hard plastic and are approximately nine inches square. The base of the plastic container is permanently marked with the country of origin. Each case is designed to hold between five and twenty-five wafers. Paper and foam divide the wafers to prevent damage during shipment. After the wafers are removed at the assembly and testing facilities, the empty wafer containers are shipped to a third party, where they are cleaned and inspected. The shipping containers are then stored until the next shipment of wafers are ready for export. At that time, Spansion Inc. loads the wafers into the reusable containers for export. In 2006, Spansion Inc. had approximately 14,000 wafer shipping containers in circulation, and only 80 new containers needed to be added.

ISSUE

Whether the plastic shipping containers described above are "instruments of international traffic" within the meaning of 19 U.S.C. 1322(a) and 19 C.F.R. 10.41a?

LAW AND ANALYSIS

Pursuant to 19 U.S.C. 1322(a), "vehicles and other instruments of international traffic, of any class specified by the Secretary of [Homeland Security], shall be excepted from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary..." Lift vans, cargo vans, shipping tanks, skids, pallets, caul boards, and cores for textile fabrics are explicitly classified as "instruments of international traffic" (see 19 C.F.R. 10.41a(a)(1)). Additionally, the Commissioner of Customs and Border Protection is authorized to designate other items besides those mentioned as "instruments of international traffic." Once designated as such, the instruments may be released without entry or payment of duty.

To qualify as an "instrument of international traffic" within the meaning of 19 U.S.C. 1322(a) and 19 C.F.R. 10.41a, an article must be used as a container or holder; the article must be substantial, suitable for and capable of repeated use, and used in significant numbers in international traffic (see Headquarters Decisions 108084 , 108658 , 109665 , and 109702). The concept of reuse contemplated above is for commercial shipping or transportation purposes, and not incidental or fugitive uses. Tariff Classification Study, Sixth Supplemental Report (May 23, 1963 at 99. See, *Holly Stores, Inc. v. United States*, 697 F.2d 1387 (Federal Circuit, 1982). In Headquarters Decision 116641), U.S. Customs and Border Protection ("CBP") ruled that plastic

1

cassettes used to transport magnetic disks are reusable since empty cassette disks were emptied, washed and prepared for the next export cycle and had a useful life of at least 18-24 months. Reuse has been held to mean using the containers more than twice. (See Headquarter Decisions 105567 and 108658).

In the present case, the wafer containers are also emptied, shipped to a third party where they are cleaned and inspected then stored until more wafers need to be exported. Since only 80 new wafer plastic containers needed to be ordered in 2006 out of approximately 14,000 wafer containers in circulation, the containers appear to have a long useful life.

We note that the CBP has previously ruled on the "instruments of international traffic" status of containers of similar size, material and that are used for the same purpose. In Headquarters Decision 115033 , dated May 30, 2000, the CBP ruled that integrated circuit wafer cases made of hard plastic and approximately ten inches square with each case holding 26 wafers are "instruments of international traffic." It is well-settled that containers made of plastic can qualify as "instruments of international traffic" (see Headquarters Decisions 115033 , dated May 30, 2000, 114506 , dated October 29, 1998 and 112534 , dated January 25, 1993).

Upon reviewing the request, the accompanying documentation and sample container, the shipping containers appear to be substantial, suitable for and capable of repeated use, and used in significant numbers in international traffic. Furthermore, the CBP has previously ruled that shipping containers of similar use and construction as those presently under consideration qualify as "instruments of international traffic" pursuant to 19 U.S.C. 1322(a) and 19 C.F.R. 10.41a (see Headquarter Decision 115033 , dated May 30, 2000. The instruments may be released without entry or payment of duty. The sample provided is being returned to you.

HOLDING

The shipping containers described above qualify as "instruments of international traffic" within the meaning of 19 U.S.C. 1322(a) and 19 C.F.R. 10.41a and may be released without entry or the payment of duty.

Sincerely,

Glen E. Vereb, Chief

1

Cargo Security, Carriers and Immigration Branch