

U.S. Customs Service

General Notices

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING LASER PRINTER ENGINES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of final determination.

SUMARY: This document provides notice that Customs has issued a final determination concerning the country of origin of certain laser printer engines which are sold to OEM's to be incorporated into laser printers which will be offered to the United States Government. The final determination found that based upon the facts presented, the country of origin of laser printer engines is Japan.

DATE: The final determination was issued on November 8, 2002. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of November 21, 2002.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Special Classification and Marking Branch, Office of Regulations and Rulings (202-572-8838).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on November 8, 2002, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR Part 177, Subpart B), Customs issued a final determination concerning the country of origin of certain laser printer engines which are sold to OEM's to be incorporated into printers offered to the United States Government. The U.S. Customs ruling number is HQ 562502. This final determination was issued at the request of Canon, Inc., under procedures set forth at 19 CFR Part 177, Subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511-18). The final determination concluded that, based upon the facts presented, the assembly of the laser scanner unit subassembly in Japan and the final assembly in Japan of the laser scanner unit with other components to create certain laser printer engines results in a substantial transformation of the components imported into Japan. Accordingly, the country of origin of the printer engines is Japan.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the Federal Register

within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), states that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the Federal Register.

Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of November 21, 2002.

Dated: November 8, 2002.

GLEN E. VEREB,
*Acting Assistant Commissioner,
Office of Regulations and Rulings.*

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 8, 2002.
MAR-05 RR:CR:SM 562502 KSG
Category: Marking

HARVEY M. APPLEBAUM, ESQ.
COVINGTON & BURLING
*1201 Pennsylvania Avenue NW
Washington, DC 20004-2401*

Re: Country of origin of computer laser printer engines; substantial transformation;
19 CFR 177.22; procurement.

DEAR MR. APPLEBAUM:

This is in response to your letter dated June 4, 2002, on behalf of Canon, Inc., requesting a final determination of origin pursuant to 19 CFR 177.22(c) regarding U.S. Government procurement of certain laser printer engines assembled in Japan.

Facts:

Canon, Inc., is the foreign manufacturer and exporter of the printer engine and therefore, a party-in-interest as defined in 19 CFR 177.22(d).

This case involves the Canon P1070 printer engine that is the principal part of laser beam printers. Canon will sell the printer engines exclusively to OEM's. The printer engine carries out most of the electrophotographic process, including the exposure function.

The printer engine is composed of three subassemblies; the laser scanner unit, the transfer feeder unit and outer covers. The laser scanner unit is assembled in Japan using components manufactured in Japan and other countries. The laser scanner unit performs the exposure function. The transfer feeder unit is assembled in China using components from Japan, China and Thailand. The transfer feeder unit carries out the transfer and fixing functions. The outer covers are manufactured in China.

The first set of assembly steps for the laser scanner unit in Japan completes the laser unit subcomponent. Using setting equipment, a laser chip and collimator lens unit are attached to the laser unit printed circuit board ("PCB"). An operator solders the terminal of the laser chip to the laser unit PCB. An operator then adjusts the power of the laser beam radiated from the laser unit and checks the laser unit exterior.

Following completion of the laser unit, an operator attaches additional component parts to an optical case: using screws, an operator attaches the beam detect ("BD") sensor unit,

scanner motor unit, laser unit and BD mirror; using a fixing spring, an operator attaches a reflection mirror; and using ultraviolet adhesives, an operator attaches a toric lens, f θ lenses and a cylindrical lens. An operator measures and adjusts the power of the laser beam and jitter (distortion of rotating shaft of scanner motor).

Then, an operator determines the starting point of the laser scanning. Finally, an operator attaches to the laser scanner unit a BD sensor unit moltplane and motor wire harness moltplane (by seal), a connector (by hand) and an outer cover (with screws). An operator then checks the exterior of the laser scanner unit. You advised that the assembly of the laser scanner unit requires precision.

The transfer feeder unit transfers the toner on the photosensitive drum onto print paper. Assembly of the transfer feeder unit in China involves many steps and is a time-consuming process. This assembly includes attachment of the following components to a mold frame unit: paper pick-up unit, paper feed roller, registration roller unit, transfer charging roller unit, DC controller unit, pick-up drive unit, main drive unit, fixing unit and delivery roller unit. An operator then performs an electrical check of the transfer feeder unit. Using screws, an operator next attaches an outer cover and front cover to the transfer feeder unit. Finally, an operator checks the paper feed function of the transfer feeder unit.

The final assembly of the laser beam printer engine occurs in Japan. Using screws, an operator fixes the laser scanner unit to the transfer feeder unit. An operator attaches the following components by hand to the laser scanner unit and transfer feeder unit: a laser wire harness, scanner motor wire harness, and BD wire harness. An operator then checks the electrical function of the engine to meet internal electrical safety requirements. An operator next attaches an auxiliary cover and display wire harness along with an upper cover and panel unit. Following the engine assembly, an operator evaluates the image of test pattern printouts to confirm that the printer engine meets printing precision requirements. You indicate that precise assembly is required for the printer engine.

Issue:

Whether the printer engines are substantially transformed in Japan so that they become products of Japan for U.S. Government procurement purposes.

Law and Analysis:

Under Subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), the Customs Service issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated foreign country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

Also see 19 CFR 177.22(a).

If the manufacturing or combining process is a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred. *See Uniroyal Inc. v. United States*, 3 CIT 220, 542 F. Supp. 1026 (CIT 1982). Assembly operations which are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. *See* C.S.D. 80-111, C.S.D. 85-25, and C.S.D. 90-97.

In *Texas Instruments Inc. v. United States*, 681 Fed 2d 778 (CCPA 1982), the court held that the assembly of encapsulated integrated circuits in Taiwan from materials imported from the U.S. constituted a double substantial transformation for the purposes of the Generalized System of Preferences ("GSP"). The imported goods involved in the case were electronic camera parts called "cue modules" that consist of a flexible circuit board with three integrated circuits attached. The court determined that silicon slices were imported into Taiwan and then further manufactured in Taiwan into IC chips. The IC chips were then manufactured into finished IC's. The court noted that the question presented was "a mixed question of technology and customs law * * *." The court concluded that the finished IC's were "the result of extensive manufacturing operations in Taiwan which con-

verted materials into articles, as distinguished from mere assembly * * * and determined that a double substantial transformation had occurred.

Customs ruled in Headquarters Ruling Letter ("HRL") 561734, dated March 23, 2001, 66 Fed. Reg. 17222, that Sharp multifunctional machines (printer, copier and fax machine) assembled in Japan were a product of Japan for procurement purposes. The machines were comprised of 227 parts (108 parts sourced from Japan, 92 parts from Thailand, 3 parts from China, and 24 parts from other countries) and eight subassemblies, each of which was also assembled in Japan. Further, the scanner unit (one of the eight subassemblies) which was assembled in Japan was characterized as "the heart of the machine." *Also see* HRL 561568, dated March 22, 2001, 66 Fed. Reg. 17222.

In HRL 560433, dated September 19, 1997, Customs held that the assembly in the United Kingdom of audio/video stereo receivers from 16 subassemblies and other components originating from various countries resulted in a substantial transformation. Customs noted in that ruling that numerous skilled workers assembled the stereo receivers from numerous components and hundreds of raw materials. In HRL 734045, dated October 8, 1991, Customs held that foreign subassemblies and other components imported into Hong Kong which were processed and assembled with other domestic components to make laptop and notebook personal computers were substantially transformed as a result of the Hong Kong operations.

Based on the facts in this case and consistent with HRL 561734 and HRL 560433, we find that the printer engines are substantially transformed in Japan. When taken together, the manufacture of the laser scanner unit and final assembly of the printer engine in Japan is complex and meaningful. There are numerous parts involved in the assembly of the laser scanner unit and the final assembly of the printer engine. The assembly requires precision and trained workers. Further, as noted in HRL 561734, the scanner unit is an integral part of the printer engine. The name, character and use of the subassemblies and parts imported into Japan change as a result of the processing and other assembly operations performed in Japan. Therefore, pursuant to 19 U.S.C. 2518(4)(B), we find that the country of origin of the printer engines is Japan.

Holding:

Based on the facts presented, the components imported into Japan that are used in the manufacture of the computer printer engines involved in this case are substantially transformed in Japan. Accordingly, pursuant to 19 U.S.C. 2518(4)(B), the country of origin of the printer engines is Japan.

Notice of this final determination will be given in the Federal Register as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that Customs reexamine the matter anew and issue a new final determination.

Any party-at-interest may, within 30 days after publication of the Federal Register notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Dated: November 8, 2002.

GLEN E. VEREB,
Acting Assistant Commissioner,
Office of Regulations & Rulings.

[Published in the Federal Register, November 21, 2002 (67 FR 70299)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, November 20, 2002.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
(for Michael T. Schmitz, Assistant Commissioner,
Office of Regulations and Rulings.)

PROPOSED REVOCATION OF RULING LETTERS AND
TREATMENT RELATING TO THE REPAIR AND ALTERATION
OF PHOTOCOPIERS ABROAD

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letters and treatment relating to the repair and alteration of photocopiers abroad.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke four ruling letters pertaining to the eligibility for treatment under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS) of certain photocopiers. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before January 3, 2003.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: T. James Min II, Special Classification and Marking Branch, (202) 572-8839.

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 Customs 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 Customs 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 Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke four ruling letters pertaining to the treatment provided under subheading 9802.00.50, HTSUS, to the repair and alteration of certain photocopiers. Although in this notice Customs is specifically referring to Headquarters Ruling Letters (HRLs) 559418, dated December 12, 1996, 569672, dated December 17, 1996, 560006, dated March 21, 1997, and 560290, dated May 10, 2000, this notice covers any rulings on this merchandise which may exist but have not specifically been identified that are based on the same rationale. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice which is contrary to the position set forth in the ruling letters proposing to revoke HRLs 560290, 560006, and 559672, and 559418 should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or Customs previous interpretation of the law. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer’s failure to advise Customs 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 the effective date of the final notice of this proposed action.

Subheading 9802.00.50, HTSUS, provides a partial or complete duty exemption for articles exported from and returned to the United States after having been advanced in value or improved in condition abroad by repairs or alterations, provided the documentary requirements of section 181.64 (for articles returned from Canada or Mexico) or section 10.8 (for articles returned from any other country), Customs Regulations (19 CFR § 181.64 and § 10.8), are satisfied.

In HRLs 560290, 559418, 560006, and 559672, Customs determined that the operations conducted abroad to convert a model A to D, model B to D, model C to D, and model F to D, respectively, did not constitute “repairs or alterations” because the essential identity of the copiers was not retained during the foreign processing operations. Among the reasons given in the rulings were that there were substantial changes made to the imaging assemblies, and that in conjunction with the replacement of other “worn components,” the operations went beyond repairs and alterations within the meaning of subheading 9802.00.50, HTSUS.

Customs has reconsidered the above four rulings and determined that they are incorrect in holding that treatment under subheading 9802.00.50, HTSUS, is inapplicable to the returned photocopiers. It is now Customs position that, in regard to the specific factual situations involved in these rulings, the foreign processing operations qualify as acceptable repairs and alterations under this tariff provision.

Pursuant to 19 U.S.C. 1625(c)(1), this notice advises interested parties that Customs proposes to revoke HRLs 560290, 559418, 560006, and 559672 (set forth as Attachments A, B, C, and D to this document, respectively) and any other rulings not specifically identified, to reflect the proper treatment of the merchandise pursuant to the analysis set forth in proposed HRLs 562513, 562514, 562515, and 562516 (set forth as Attachments E, F, G, and H to this document, respectively). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 13, 2002.

CRAIG WALKER,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, May 10, 2000.
CLA-2 RR:CR:SM 560290 MLR
Category: Classification
Tariff No. 9802.00.50

PORT DIRECTOR
U.S. CUSTOMS SERVICE
610 W. Ash St.
San Diego, CA 92188

Re: Internal Advice; applicability of duty exemption under HTSUS subheading 9802.00.50 to Kodak Model D copier from Model A copier; Mexico; 19 C.F.R. §181.64(c).

DEAR SIR/MADAM:

This is in reference to letters dated April 7 and 20, March 10, and January 15, 1998, and June 2, March 4, and January 27, 1997, from S.K. Ross & Assoc., P.C. ("Ross"), prepared on behalf of Eastman Kodak Company ("Kodak"), and letters dated August 15 and June 2, 1997, from Siegel, Mandel & Davidson, P.C. ("SMD"), prepared on behalf of Danka Office Imaging Company ("Danka"), concerning the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), to photocopiers from Mexico. A meeting was held at the Office of Regulations & Rulings on January 27, 1998, and March 19, 1999. We regret the time we have taken with our response.

Facts:

It is stated that Kodak or one of its customers exports used model A copier-duplicators which are no longer operational to Mexico, performs various processes to these copiers, and imports model D copier-duplicators to the U.S. It is claimed that the processes performed in Mexico are "repairs and alterations" and that the returned articles qualify for duty-free entry under subheading 9802.00.50, HTSUS. Other copier decisions Customs has issued include Headquarters Ruling Letter (HRL) 559405 dated July 11, 1996; HRL 559418 dated December 12, 1996; HRL 559483 dated October 17, 1996; HRL 559485 dated October 17, 1996; HRL 559672 dated December 17, 1996; HRL 559770 dated January 10, 1997; and HRL 560006 dated March 21, 1997.

In the Ross submission dated January 27, 1997, it is claimed that the copiers are eligible for preferential tariff treatment under the NAFTA, and Ross, on behalf of Kodak, states that Kodak reserved its right to augment its presentation on the NAFTA issue should classification under subheading 9802.00.50, HTSUS, be denied. A protest and application for further review, in part on the NAFTA issue (file number 561111 is being considered by this office).

The various submissions from both parties indicate that the conversion from a model A to a model D involves the following operations:

1. The toning station (also referred to as the developer station) is replaced with a new toning station to provide enhanced image quality. SMD states that the toning station on the model D operates more efficiently by repositioning the developer roller closer to the image loop, incorporating an internal scavenger which attracts the developing solution, and changing the rotation of the toning roller with respect to the direction of the image loop. The new toning station also permits the use of an improved developer and more refined toner.
2. Paper level indicators are added to the paper supply drawers which help the customer determine the amount of paper in each drawer without having to stop operations. These are stated to simply be a series of LEDs mounted on the outer front panel which receive electrical signals from the various paper supplies indicating the amount of paper remaining in each drawer.
3. A new tri-modal document feeder is added, including an improved latch, allowing for smoother operation.
4. New trade dress is applied.
5. The copier speed is enhanced from 70 to 85 copies per minute by replacing three sprockets and a chain.
6. Noise is reduced by adding a muffler in the vacuum system and a damper from the paper stop gate.

In addition, the following description of some of the operations performed at various stations is provided:

Station 10: Cabinetry and feeder removal:

The top hopper, feeder cover, and logic molding covers are replaced with new panels. All other panels will be reused but painted a different color.

Station 30: Tear down, main frame alterations and cleaning:

Drilling operations are performed to the main frame to accommodate harness modifications and unique components of the model D.

Subassemblies:

The registration assembly is altered to accommodate the addition of the Pressure Assist Corona Transfer (PACT) modification. The PACT modification is stated to keep the paper flatter as it works its way through the imaging process, but allegedly does not change the copier's function. Two new subassemblies are added, a document positioner hopper and a paper supply cover. In the logic and control assembly, the EPROMs are erased and reprogrammed with new software, including an energy saving feature that puts the copier in stand-by mode. The developer station is totally replaced with a new high definition grain station, which allows for superior image quality. The document feeder is replaced with a trimodal feeder that incorporates a semi-automatic positioner.

Station 35: Wiring:

The copier main harness is modified to accommodate the model D new features.

Station 40: Main frame reassembly:

Some main frame components are replaced such as the main drive motor sprocket, clutch, and developer drive sprocket assembly to speed up the copier's performance. The vacuum system is modified to incorporate the ability to automatically duplex, accommodate heavier paper sizes, and reduce noise levels through the addition of a muffler. Two circuit boards are replaced on the operator control panel to include new features of the model D.

HY POT:

Because of design changes, new parts like a solenoid, wire harness, and circuit boards are tested for electrical safety.

Station 120: Functional set up and testing:

Set-up and testing are performed to verify the function of the document positioner, wireform, duplex tray, and new developer station assemblies.

On January 15, 1998, two videos and a "key attributes matrix" were submitted showing the two models side-by-side and breaking down a copier into 185 attributes Kodak has identified as key to a copier. The similarities and differences between the two models are explained by focusing on the key subassemblies referred to in Additional Note 5, Chapter 90, HTSUS. The matrix shows many of the features to be the same. The differences include a change in copy speed. In the Imaging Assemblies, the changes are the removal of one electrically conductive magnetic roller, and a change in the bias voltage applied to the development mechanism. A change in voltage and magnetic rollers is done to improve development of half tones and image resolution. Although this change does alter and improve the imaging process, it is stated that the majority of the imaging technology and hardware remain the same. In the cleaning/erasing assembly, there is a new LED front side interframe erase bar, and a new vacuum magnetic scavenger roller assembly. A distinction between the two models is that in the model A, the bar is located to illuminate the back side of the film loop, whereas on the model D, the bar is located on the front side of the film loop. Both features serve the same function. Relocation in the model D was necessary to make space for the modified developer station. In the charging assembly, the original transfer was not pressure assisted so a PACT (Pressure Assisted Corona Transfer) is added. No differences are claimed between the two models in the Optics or Image Fixing Assemblies. In the User Control assemblies, there is one difference, the color of the LEDs. In the paper handling assemblies, the only difference is the model A has no paper level indicators. What is unique to the model A is its trade dress and the height of the operator control panel. Otherwise, it is stated that the two models are the same in terms of their features and characteristics. Of the 185 characteristics listed, 174 are stated to be the same, 11 are new in the model D, and 2 are unique to the model A.

In previous Kodak submissions, it was indicated that the major parts in the toner and developer assembly are the toner container, replenisher, developer, and magnet rollers, a

gear box, sump casting, drive shaft plus a toner concentration monitor and miscellaneous gears, bearings and hardware, and that the function of the toner and developer assembly is to receive toner from a bottle and pass it to the image loop for transfer onto the paper on which the image results.

In the meeting on January 27, 1998, Customs also requested more details concerning the repairs performed, as prior Kodak submissions indicated the replacement of "worn parts." Customs specifically requested a list of the parts that are replaced 100 percent of the time during the repair process.

In the Ross letter dated March 10, 1998, it is stated that there are approximately 3,100 parts making up a copier and they are separated into three categories: A parts costing more than \$11.00 each; B parts costing between \$2.50 and \$11.00; and C parts costing less than \$2.50. Of the parts that are replaced 100 percent of the time, it is stated that there are 143 parts replaced that are valued over \$2.50; the C parts were entirely omitted. Of the 143 parts, 9 parts were listed: wire harnesses, muffler boxes, fuser assemblies, paper supplies, IQE stations, blowers, cabinetry, logic control units, and registrations. After Customs request for a more detailed list, on April 7, 1998, it was stated that 124 A and B parts from 877 A and B parts were replaced and the following parts were listed: solenoids, filters, switches, sensors, brushes, actuators, paper feed rollers, clutches, chains, bearings, brackets, pulleys, belts, valves, hoses, guide plates, circuit boards, labels, motors, casters, panels, and springs. On April 20, 1998, a complete list of all 124 A and B parts replaced was submitted, in what the letter referred to as "engineering short-hand." Customs also requested information regarding whether a particular part was a consumable; however, this information was not provided. While the model A has a magnetic scavenger, when it is converted to the model D, the roller is replaced with a vacuum scavenger for the purpose of the reduction in image quality defects. The last difference between the two models is the addition of a document positioner. It allows the operator to feed single originals across the platen glass for imaging.

In regard to the previous Kodak submissions, your office stated that the exported copiers did not possess the necessary mechanical hardware, circuitry, document positioner, tri-modal feeder, auto-sizing capabilities, PACT and programming required by the imported copier. Your office states that the tri-modal feeder takes normal paper weights and sizes automatically through the recirculating feeder, or it copies odd size and weight originals through the semi-automatic positioner, or it allows for manual copying. The auto-sizing capabilities reduce the image size of the original to fit the selected paper supply, and it is capable of offset stacking. The PACT is also not a simple mechanical device which holds a piece of paper in place to enhance the quality of the copy produced during the imaging process, but rather its purpose is to aid in preventing white spots on the second side of duplex copies in low humidity environments. Your office states that the registration assembly (mechanical) was altered to accommodate the addition of the PACT. Registration assembly was done by installing a new circuit board and wire harness in the main frame. A paper supply cover and a document positioner hopper were created to guide and capture originals.

Your office states that Kodak has failed to include either entry-by-entry details or an inventory accounting method as to the exact repairs and alterations performed on each and every copier converted.

Issue:

Whether the conversion of a Kodak Model A copier to a Kodak Model D copier constituted a repair or alteration within the meaning of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), thereby qualifying the returned Model D copier for the duty exemption under this tariff provision.

Law and Analysis:

Articles exported from and returned to the U.S., after having been advanced in value or improved in condition by repairs or alterations in Mexico, may qualify for a duty exemption under HTSUS subheading 9802.00.50, provided the foreign operation does not destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture. See *A.F. Burstrom v. United States*, 44 CCPA 27, C.A.D. 631 (1956), *aff'g* C.D. 1752, 36 Cust. Ct. 46 (1956); *Guardian Industries Corp. v. United States*, 3 CIT 9 (1982). Articles are entitled to this duty exemption provided the documentary requirements of section 181.64(c), Customs Regulations (19 C.F.R. §181.64), are satisfied. In particular, the documentation required includes a declaration from the person

who performed the repairs or alterations, which describes the operations performed and the value and cost of such operations and which includes a statement that “no substitution whatever has been made to replace any of the goods originally received.”

“Repairs or alterations” are defined in 19 C.F.R. §181.64 as the restoration, addition, renovation, redyeing, cleaning, reesterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the U.S.

It is claimed that the modification of the model A to the model D does not change the characteristics of the machine so as to alter its use and handling as a high volume copier, and the additional features and improved copy quality do not change the performance characteristics which define the article as a copier.

In prior Kodak rulings, including HRL 559672; HRL 559418; HRL 559770; HRL 559483; HRL 559485; and HRL 560006, Ross acknowledges that Customs relied upon Additional Note 5, Chapter 90, HTSUS, (a) through (e), in that order, as indicative of the copier assemblies’ significance to the copier. Additional Note 5, Chapter 90, HTSUS, provides for:

- (a) Imaging assemblies, incorporating more than one of the following: photoreceptor belt or cylinder, toner receptacle unit, toner distribution unit, developer receptacle unit, developer distribution unit, charge/discharge unit, cleaning unit;
- (b) Optics assemblies, incorporating more than one of the following: lens, mirror, illumination source, document exposure glass;
- (c) User control assemblies, incorporating more than one of the following: printed circuit assembly, power supply, user input keyboard, wiring harness, display unit (cathode ray type or flat panel);
- (d) Image fixing assemblies, incorporating more than one of the following, fuser, pressure rollers, heating elements, release oil dispenser, cleaning unit, electrical controls;
- (e) Paper handling assemblies, incorporating more than one of the following, paper transport belt, roller, print bar, carriage, gripper roller, paper storage unit, exit tray; or
- (f) Combination of the above specified assemblies.

In previous Kodak submissions, Ross stated that a copier’s essential components are the image capture system (lenses and film handling assembly). Ross now states that the essential components of a copier are its imaging and paper handling processes, both of which remain unchanged.

In HRL 559672, Customs considered the conversion of the model F into a model D. As in this case, among the changes made to the model F copier, in the imaging assemblies, the toning station was replaced which enhanced the image quality; the film belt and worn components were replaced, and a new LED erase bar was installed in the photoreceptor belt and handling assembly; worn components were replaced in the charging assemblies; and an upgraded cleaning housing was added and a new scavenger was installed in the cleaning assembly. The scavenger was also replaced in the cleaning assembly with one of a more efficient design. In the paper handling assemblies, an upgraded trimodal document feeder that incorporated a semi-automatic positioner was installed including an improved latch to allow for smoother operation; paper level indicators were added to the paper supply drawers to help customers determine the amount of paper in each supply drawer without having to stop copier operations; the paper supply was modified to allow for automatic duplexing which resulted in the addition of a duplex tray and the inclusion of duplex paper path assemblies; the registration assembly was also altered to accommodate the addition of the PACT; holes were added to the mainframe to accommodate new harnesses; and noise reduction was achieved by adding a muffler in the vacuum system and a damper from the paper stop gate. In the logic and control unit, reprogrammed EPROMS were installed to allow the software to relate to all of the new functions; plus an additional energy saving feature was added to the software. Additionally, the copier received a new trade dress and the copier speed was enhanced from 70 to 85 copies per minute by replacing three sprockets and a chain. In HRL 559672, Customs found that all of these operations went beyond repairs and alterations within the meaning of subheading 9802.00.50, HTSUS.

Ross makes reference to Kodak’s application for further review concerning the model B to Model C process (HRL 559483) and states that the arguments made therein are applicable to this case concerning the model A to D conversion. Ross states that tri-modal feeders, the PACT, and necessary programming changes, along with changes in the paper handling

capability, document feeder, registration assembly, and the addition of a paper supply cover, document positioner hopper, accompanied by EPROM reprogramming, have already been approved as repair or alteration processes under subheading 9802.00.50, HTSUS, in HRL 559483. It is also claimed that HRL 559483 and HRL 558858/558859 approved the general repair and maintenance required to allow copiers to be reconditioned for further use, as well as the addition of upgraded parts, once the copier's original condition deteriorates to the point of being non-operational. Further, it is claimed that in HRL 555046, Customs approved the reprogramming of copier memory boards and EPROMS and the addition of a feeder, stacker, and enhanced control panel as an alteration under subheading 9802.00.50, HTSUS. A new document positioner was allowed in HRL 559483. Changes in trade dress were approved in HRL 559770. A change in the height of the operator control panel was approved in HRL 559483.

SMD states that in HRL 557530 dated December 15, 1993, Customs approved modifications that increased the copy speed from 70 to 85 copies per minute by replacing four gears, three chains, and a CPU board. In HRL 559485 dated October 17, 1996, the conversion of the model B to model E was acceptable, which included adding new circuit boards, reprogramming existing memory chips to accommodate a new "tri-modal" document feeder, and adding or changing the PACT, cleaning housing, wire harness, display panel, and color scheme. It is claimed that all these upgrades, as well as an increase in copy speed are also involved in the process of converting the model A to model D.

SMD states that it believes that in prior adverse Kodak rulings, Customs considered the cumulative effect of the modifications to each of the major systems in deciding that they were not acceptable repairs or alterations. SMD also states that the installation of a new toning station resulting in improved copy quality predisposed Customs to conclude that the essential identity of the exported copiers was lost. It is claimed that these adverse rulings fail to recognize that high volume copiers are mechanically complex machines and are subject to constant wear, and, therefore, require frequent maintenance and repair, including the replacement and routine upgrade of numerous mechanical parts. It is also claimed that the adverse rulings fail to consider that the efficiency of a copier, including copy quality, can readily be improved without changing the fundamental nature of the copier. Moreover, SMD claims that identifying almost every system as crucial to the essential identity of a copier erroneously assumes that the individual components of a copier are greater than the sum of the parts. While copy quality improvement is noticeable, the model D and model A copiers are commercially interchangeable machines, both identified as high volume copiers. It is also stated that the adverse rulings fail to consider that the improvement in picture quality is attributable to relatively minor improvements which do not alter the fundamental nature of the copier. The changes, such as repositioning the developer roller a fraction of an inch in the developing station incorporated in the model D are not drastic. Other refinements such as repositioning an LED erase bar, and using an improved cleaning assembly may also be accomplished at the customer's site.

It is stated that the courts have liberally applied subheading 9802.00.50, HTSUS, and its predecessor provisions, as long as intermediate processing operations are not conducted in order to manufacture a finished article, and that alterations can change the name and appearance of an article and its marketability, provided the changes are not the result of intermediate manufacturing performed on unfinished articles. SMD cites many court decisions, including *Gilbert W. Green v. United States*, 13 Cust. Ct. 273, Abstract 49676 (1944), where a woman's platinum and diamond solitaire engagement ring was exported, the diamond and filigree setting was excised and superimposed on top of a man's white gold ring with opal and bloodstone setting at either end. While the duty benefit was disallowed for failure to register the exported ring, the court concluded that the modification of the woman's ring was an alteration since additions may be made provided there is no conversion into something else. In *LeGran Manufacturing Company v. United States*, 59 Cust. Ct. 58, C.D. 3070 (1967), the court mentioned the *Green* decision and stated that a "ring was exported and an altered ring was imported." In *Press Wireless, Inc. v. United States*, 6 Cust. Ct. 102, C.D. 438 (1941), the court stated that the use of an improved type of material in the restoration was immaterial, and that it was of no consequence that the returned product was to some degree more efficient. SMD also claims that neither was there any indication that the replacement of what was obviously the single most important component of the tube, the filament, destroyed its identity. In *G.L. Ramsey a/c The Juvenile Mfg. Co., Inc. v. United States*, 26 Cust. Ct. 603, Reap. Dec. 7978 (1951), it was held that embroidering dress fronts in Mexico constituted an alteration since complete and finished

dress fronts were exported and returned. In *Wilbur G. Hallauer v. United States*, 40 CCPA 198 (1953), the court concluded that ungraded apples covered with a film of insecticide spray residue were altered by cleaning, grading, etc., recognizing a change in condition and marketability. In *Amity Fabrics, Inc. v. United States*, 43 Cust. Ct. 64, C.D. 2104 (1959), the court allowed redyeing of pumpkin colored fabric which created a market for fabric that otherwise could not be sold.

SMD also cites several rulings as support, including HRL 559740 dated October 3, 1996, where a transformer was found not to have undergone a change in character and use and retained its identity as a power transformer when returned to the U.S. We note that the ruling pertained to the article's eligibility under the Generalized System of Preferences (GSP), and, therefore, is not applicable. The same holds true for counsel's citation of HRL 554539 dated August 25, 1987, which also considered the GSP; however, as noted by counsel, the ruling stated that the restored pumps were ineligible for item 806.20, TSUS, treatment, as the identity of the individual exported steering pump could not be maintained by the unstructured reassembly process even though a pump was exported and a pump was imported.

SMD states that in HRL 559197 dated September 1, 1995, Customs also stated that since the units do not undergo complete disassembly, the concept of essential identity does not apply. Ross states that Customs in HRL 558858/558859 dated March 11, 1996, applied the "essential identity" requirement to both partial and complete disassembly, including the replacement of worn parts or upgrade of parts, so long as the essential components, and therefore, the identity of the copiers remained intact throughout the repair or alteration operation. Regardless whether there is a partial or complete disassembly, we note that 19 C.F.R. §181.64 provides that the repair and/or alteration cannot destroy the essential characteristics of the exported article. In *Press Wireless, supra*, the court also held that the use of improved materials in the restoration was immaterial, as long as the article was not considered a new and different article of commerce or its identity was destroyed.

In HRL 558858/558859, Customs considered seven models of used copier "hulks" which were repaired, upgraded, and/or modified in Mexico. In each case, the frame of the "hulk" remained intact, and the components such as the wiring harnesses, optics assemblies, printed circuit boards, and other electronic subassemblies remained assembled to the hulk at all times. The operations performed in Mexico involved removing the covers, feeder assembly, fuser, developer houser, xerographic motor, control panel, bypass, platen glass, coroton, copy cartridge and bypass tray assembly. The covers were sanded and painted, and the platen glass and other non-repairable parts were scraped. Next, the fuser, developer housing and bypass were sent to subassembly stations for repair. The partially torn-down hulk was then sent to an assembly and repair area where the enabler, low and high voltage power supplies, power cord, main printed wiring board assemblies (pwba), paper size pwba, feeder motor, copy cartridge, counter solenoid, counter, balance spring, half rate cartridge, and front/rear rail were removed, repaired, and reassembled along with the previously removed parts.

During the period of 1992-1993, the frames, optics, wiring harnesses, optical control boards, optical drive motor, noise filter, fans, blower, discharge lamp, lower cover base, paper feeder motor, ac driver and sensor pwbas, and the low and high voltage power supplies were left intact on the hulk. During the period of 1993-1995, the paper feeder motor, ac driver and sensor pwbas and the low and high voltage power supplies were removed from the hulk frame during the repair and assembly process. However, such parts were identified by bar code, and new parts were either used if required, or the used repaired parts were returned to the same model number. The EPROMS contained in the copier's control panel were replaced or reprogrammed so that the copier could perform upgraded tasks, such as operating a noise reduction package or an automatic stapler. In regard to the replacement or reprogramming of the EPROMS, which upgraded the copiers to conform to current industry standards, it was determined that this did not change the identity of the exported articles, but rather improved the product and advanced its value. It was found that the essential components of the copiers remained intact throughout the repair process, and did not lose their identity as a result of the Mexican operations. Accordingly, the copiers qualified for subheading 9802.00.50, HTSUS, treatment.

Counsel believes that Customs found the relevant factors underlying the adverse Kodak decisions to be based on the fact that there was a different name (presumably model number), characteristics (better copy quality is specifically mentioned), and sales of the resulting model to a different market. Counsel also states that in HRL 559672, Customs relied

upon the fact that two-sided copying was not possible. However, counsel notes that the model A has the ability to perform automatic two-sided copying so there is no upgrade involved with the model D copier.

SMD claims that if better quality copies were a critical factor, no photocopier could ever be repaired. Further, a change in copier quality is a result in each of the favorable rulings already issued to Kodak. Regarding a change in the sales market, it is stated that the model A was the top of the line in its infancy. As a result of its reconditioning into a model D copier, the resulting model is again at the top of the product line. The heart of an electrophotographic copier is the electrophotographic process used. The model A and D share the same photoconductor (film loop), toner and developer concept (dual component), as well as the erase, cleaning, charging, exposure and optics systems. Only the transfer and scavenging systems and the development process have been modified. Measured against the 50 imaging attributes for these name subassemblies identified on the matrix, it is claimed that the 5 changes mentioned are minor and are alterations.

In the prior Kodak rulings, we stated that the major components of a typical high-volume photocopier include the photoconductor, a primary charger, and systems for exposure, toning, transfer, erasing, and cleaning. *McGraw Hill Encyclopedia of Science & Technology*, Vol. 13 (1987). We also recognize that the copy process is one continuous chain of events involving eight main steps: (1) charging, (2) exposing, (3) developing, (4) transferring, (5) separating, (6) fusing, (7) cleaning, and (8) erasing. E. Kuaimoku, *Photocopier Maintenance and Repair Made Easy* (1994). We also noted in prior Kodak rulings that cartridges and developer, fuser rollers and oil, the photoconductor belt, and cleaning brush are consumables which are replaced approximately every 300,000 copies (except for the cartridges which are replaced about every 10,000 copies). Therefore, for purposes of our determination of eligibility for subheading 9802.00.50, HTSUS, treatment, we focused upon the effect of the operations performed abroad upon the above copier assemblies, and as SMD accurately recognizes, the cumulative effect of the modifications made. We also stated that repairs are operations aimed at restoring articles to their original condition, but cannot be so extensive as to destroy the identity of the exported article or to create a new and different article. *Press Wireless supra*.

Counsel relies on HRL 559483 and HRL 559485 as support that Customs found certain operations acceptable repairs and/or alterations. However, we note that in those rulings, Customs stated that the protestant claimed that major components of the Imaging, Optics, Image Fixing, and Paper Handling systems were not replaced during the process, and contrary information was not presented by the port. However in this case, in the course of reviewing several of the copier models and the changes made, it is Customs understanding that the same parts are not replaced in each machine and Kodak allegedly does not know, in all cases, what parts are replaced on a particular machine in order for Customs to determine on an entry-by-entry basis (or even on an inventory management basis according to the port) whether a particular machine qualifies for 9802.00.50. The duty exemption provided under 9802.00.50, HTSUS, is a privilege, and it is well settled that compliance with mandatory regulations is a condition precedent to recovery and that the burden of proof thereof rests on the protestant. *See, F.W. Myers & Co., v. United States*, 374 F.Supp. 1395 (Cust. Ct. 1974); *H.F. Keeler v. United States*, C.D. 1842, 38 Cust.Ct. 48 (1957); and, *Pacific Customs Brokerage Co. v. United States*, T.D. 48887, 71 Treas.Dec. 530 (1937).

Customs requested, and a list of parts was provided indicating that 124 out of 877 parts valued above \$2.50 are replaced 100 percent of the time during the repair process. This indicates that approximately 15% of the copier's parts valued over \$2.50 are replaced as worn components, in addition to the upgrades and changes made to the machines, some of which appear on the list provided.

Many older court cases are cited; however, none of them have ever considered numerous changes made to a modern machine. While we recognize that the court in *Press Wireless* did note that an automobile repaired with materials of a heavier and superior quality than the worn-out parts would still be the same automobile, we also recognize that if many parts in a copier are replaced to such a degree that the copier essentially becomes a new one, the same copier exported is not the same copier imported. We also believe that a piecemeal analysis of all prior rulings where particular repairs and alterations were allowed, does not reflect the fact that subheading 9802.00.50, HTSUS, requires analysis of the particular article exported and reimported. As determined in *Guardian Industries*, glass was exported and glass was returned; however annealed glass made into tempered glass was not an alteration.

Based on the video and key attributes matrix, we agree that the two models are comparable; however, it appears that many parts and subassemblies were replaced, not only to the Paper Handling Assemblies, but a completely new toner and developer assembly, new LED erase bar, and an upgraded cleaning housing along with a scavenger were installed. It is our opinion that these are substantial changes to the Imaging Assemblies. Accordingly, we find, especially in conjunction with the other changes made to each of the major systems of the photocopier, such as reprogramming the EPROMS and modifying the copier main wiring harness in the user control assemblies, or the addition of the PACT in the image fixing assemblies, that the identity of the exported photocopier was destroyed and that a new and different photocopier was created. While we agree that making an article marketable again does not defeat 9802.00.50 treatment, the replacement of numerous components in each major assembly of the model copier in this case has the cumulative effect of changing the identity of the returned copier to such an extent that they would not be eligible for subheading 9802.00.50, HTSUS, treatment. Accordingly, it is our opinion that since the essential identity of the exported model A copiers has not been maintained in the returned model D copiers, they are not eligible for duty-free treatment under subheading 9802.00.50, HTSUS. We also note that the record does not contain any of the documents required by 19 C.F.R. §181.64(c).

Holding:

On the basis of the information submitted, it is our opinion that the Mexican operations enumerated above do not constitute "repairs or alterations" since the essential identity of the copiers was not retained. Therefore, the model D copiers are not eligible for the full duty exemption under subheading 9802.00.50, HTSUS.

This decision should be mailed by your office to the internal advice requester no later than 60 days from the date of this letter. On that date the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act and other public access channels.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, December 12, 1996.
CLA-2 RR:TC:SM 559418 MLR
Category: Classification
Tariff No. 9802.00.50

PORT DIRECTOR
U.S. CUSTOMS SERVICE
610 W. Ash St.
San Diego, CA 92188

Re: Internal Advice; applicability of duty exemption under HTSUS subheading 9802.00.50 to Kodak Model D copier; Mexico; 19 CFR 181.64(c).

DEAR SIR/MADAM:

This is in reference to letters dated June 3, 1995, and October 5, 1995, from Ross & Associates, requesting a ruling on behalf of Eastman Kodak Company ("Kodak"), concerning the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), to photocopiers imported from Mexico. A meeting was held at the Office of Regulations & Rulings on April 22, 1996, and charts and photographs were submitted at that time.

Facts:

It is stated that Kodak exported used model B copier-duplicators to Mexico, performed various processes to these copiers, and imported model D copier-duplicators to the U.S. It

is claimed that the processes performed in Mexico were "repairs and alterations" and that the returned articles qualified for duty-free entry under subheading 9802.00.50, HTSUS. Before describing the processes performed to make a model B into a model D, counsel describes the processes performed on a model B when it became a model C (the subject of Headquarters Ruling Letter (HRL) 559483 dated October 17, 1996), as it is stated that there were a number of similarities between the two types of processes. Further, counsel notes that the processes performed in the model B to model C process were almost identical to those performed in the refurbishing of the model B which remained a model B.

The model B processes performed when there is no change in model number involve disassembling the copiers, cleaning them, and replacing worn parts. It is also stated that if there was an engineering enhancement, newer model parts were installed to replace old and outdated ones. The disassembled subassemblies were routed through subassembly work stations with unique identifiers so that the repaired subassemblies could be installed into the same copier during the reconditioning phase. According to counsel, the Mexican plant did not perform optical alignments; therefore, the reassembly process kept subassemblies together which had been mated at the time of original manufacture. The copier underwent a set-up and test process and the cabinetry was reinstalled. It is alleged that the reconditioned model B copier was returned to the U.S. without change to its essential components (the image capture system (lenses and film handling assembly)). Both of the copiers are stated to be referred to as "indirect process electrophotostatic copiers," and six Erasable Programmable Read-Only Memory chips ("EPROMS") were erased and reprogrammed to accommodate updated operating instructions.

Next, counsel presents the processes performed to convert a model B to a model C. It is stated that none of the operations sped up the photocopier or altered the type or size of paper the copier is able to process. Speed and paper size and type are stated by counsel to be the criteria in the marketplace to determine whether or not a copier has been upgraded. The only features which appeared on the model C which did not appear on the model B were the specific document feeder and the Pressure Assist Corona Transfer (PACT). These two features keep the paper flatter as it works its way through the imaging process but allegedly does not change the copier's function. When the document feeder was installed, it required a modification to the static eliminator harness in the duplex tray and the positioner interlock harness in the cabinetry as the remaining internal space was diminished. As a result, a new wire harness was inserted to make the static eliminator smaller.

Counsel also states that new circuit boards were substituted whether or not the processes resulted in a change in model number. However, the model C required different circuit boards. The existing EPROMS were reprogrammed and the input/output boards were modified by soldering an additional wire which allowed the machine to operate either as a model B or a model C. The EPROMS reprogramming supposedly arose because there were changes to the operator control panel.

Counsel states that the additional steps taken which resulted in a model D were that the model B toning station was replaced with a new toning station which enhanced the image quality. The paper level indicators were added to the paper supply drawers to help customers determine the amount of paper in each supply drawer without having to stop copier operations. An improved latch was added to the document feeder allowing for smoother operation. There was also a new trade dress in the form of different color stripes (aqua) on the front of the copier.

In addition, counsel states that there were a few minor steps added to the normal reconditioning process. Holes were added to the mainframe to accommodate new harnesses. There was also the installation of a reprogrammed set of six EPROMS to allow the software to relate to all of the new functions, plus an additional energy saving feature was added to the software.

The chart of the model B to model D process indicates that in regard to the Imaging Assemblies, the film belt and worn components were replaced and a new LED erase bar was installed in the photoreceptor belt and handling assembly; a new toner and developer assembly was installed; worn components were replaced in the charging assemblies; and an upgraded cleaning housing was added and a new scavenger was installed in the cleaning assembly.

On November 27 and December 6, 1996, counsel provided additional explanations of certain operations in response to our request. It is stated that the IQE station slider, plenum assembly build, backup slider assembly, and assembly drive roller were the worn

components that were replaced in the photoreceptor belt and handling assembly. The IQE station slider basically allows the developer assembly to be removed from the machine without disassembling the machine. The new model of the plenum assembly build installed into the model D uses hoses and ducts instead of magnets to collect excess toner flakes and developer from the film loop. The backup slider assembly moves the image loop toward the developer roller when actuated. The assembly drive roller starts the movement of the image loop around the film core area, and it is stated that worn out rollers are replaced and the same rollers are used regardless of the resulting finished model.

In regard to the charging assemblies, the information received on December 6 indicates that the worn components replaced are those which naturally wear out during normal copier operations, such as the corona wires (provides the charge to the image loop), the primary (gives off the charge), and the grill (takes the charge from the corona wire and discharges it over the loop).

In regard to the toner and developer assembly, it is indicated that the major parts are a toner container, replenisher, developer, and magnet rollers, a gear box, sump casting and drive shaft plus a toner concentration monitor and miscellaneous gears, bearings and hardware. In some instances, it is stated that a scavenger is present. It is stated that the configuration and number changes depending on the specific finished copier model involved and that the function of the toner and developer assembly is to receive toner from a bottle and pass it to the image loop for transfer onto the paper on which the image results.

In regard to the cleaning housing, the information received December 6 indicates that its function is to eliminate contamination on the film path, and that its major part is a casting. The model B casting was plastic, while the model D casting is aluminum. In regard to the LED erase bar, it is indicated that it erases residual information on the image loop between copies.

In regard to the Optics Assemblies, the chart indicates that the platen glass was replaced, and worn components were replaced in the lens/mirror assembly. The information received on December 6 indicates that the worn components replaced in the lens/mirror assembly are mechanical ones, such as the timing belts and pulleys which slide the lens assembly on its guides by means of a high precision motor during the imaging process. It is also stated that if a lens/mirror is scratched or broken, the lens or mirror itself will be replaced.

In regard to the User Control Assemblies, the chart indicates that worn components and a new display panel with a new color scheme were replaced in the operator control panel assembly. In regard to the Image Fixing Assemblies, the fuser and pressure roller and worn components were replaced in the fusing assembly.

In regard to the Paper Handling Assemblies, the chart indicates that a new document feeder/positioner assembly was made reusing some components and incorporating a semi-automatic positioning feature; worn components were replaced and paper level indicators were added in the paper supply assembly; worn components were replaced and a PACT modification was added to the registration assembly; and worn components were replaced in the duplex paper path assembly, transport assemblies, and vacuum system. The information received December 6 indicates that shafts, rollers, wire forms, solenoids, and sensors (in the duplex tray) are replaced in the transport assemblies.

In regard to the logic and control unit, the chart indicates that failed components were replaced and the EPROMS were reprogrammed to accommodate the semi-automatic positioning and paper level indicating features.

As indicated above, the scavenger was replaced in the cleaning assembly with one of a more efficient design. In a letter dated December 21, 1994, counsel explains that the scavenger system is designed to remove any residual toner or carrier left on the image medium. Its purpose is to make clearer copies. At the time the letter was written, it was indicated that due to design flaws the new scavenger system was not used.

Since counsel notes that the processes in making a model D were similar to those in making a model C, your office's concerns over the model B to model C processes are noted. Your office states that the model B did not possess the necessary mechanical hardware, circuitry, document positioner, tri-modal feeder, auto-sizing capabilities, PACT and programming required for the model C to exist. Your office states that the model B was known as a copier-duplicator, while the model C was known as an offset copier-duplicator. The model C's tri-modal feeder takes normal paper weights and sizes automatically through the recirculating feeder, or it copies odd size and weight originals through the semi-auto-

matic positioner, or it allows for manual copying. The auto-sizing capabilities reduce the image size of the original to fit the selected paper supply, and it is capable of offset stacking.

Thus, your office disagrees with counsel that the only features on the model C that were not on the model B copier, were the document feeder and PACT. Your office states that the PACT is not a simple mechanical device which holds a piece of paper in place to enhance the quality of the copy produced during the imaging process, but rather its purpose is to aid in preventing white spots on the second side of duplex copies in low humidity environments. This modification not only enhanced the second side transfer characteristics by adding hardware, a solenoid, circuit board, harness, and a mylar flap, but further contributed to the creation of the model C with its tri-modal feeder and new document positioner.

Your office states that the registration assembly (mechanical) was altered to accommodate the addition of the PACT, if the model B received from the U.S. did not already have this modification installed. Registration assembly was done by installing a new circuit board and wire harness in the main frame. A paper supply cover and a document positioner hopper were created to guide and capture originals because the model C is a tri-modal feeder. The EPROM reprogramming contained the latest software enhancements made to the model B software plus the additional feature of auto paper size reduction.

Issue:

Whether the conversion of a Kodak Model B copier to a Kodak Model D copier constituted a repair or alteration within the meaning of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), thereby qualifying the returned Model D copier for the duty exemption under this tariff provision.

Law and Analysis:

Articles exported from and returned to the U.S., after having been advanced in value or improved in condition by repairs or alterations in Mexico, may qualify for a duty exemption under HTSUS subheading 9802.00.50, provided the foreign operation does not destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture. See *A.F. Burstrom v. United States*, 44 CCPA 27, C.A.D. 631 (1956), *aff'g* C.D. 1752, 36 Cust. Ct. 46 (1956); *Guardian Industries Corp. v. United States*, 3 CIT 9 (1982). Articles are entitled to this duty exemption provided the documentary requirements of section 181.64(c), Customs Regulations (19 CFR 181.64), are satisfied. In particular, the documentation required includes a declaration from the person who performed the repairs or alterations, which describes the operations performed and the value and cost of such operations and which includes a statement that “no substitution whatever has been made to replace any of the goods originally received.”

“Repairs or alterations” are defined in 19 CFR 181.64 as the restoration, addition, renovation, redyeing, cleaning, reesterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the U.S.

Since counsel has indicated that the processes involved in the conversion of a model B to a model C are similar to those when a model B is made into a model D, your office’s concerns over the model B to model C process are noted. Your office contends that rulings allow for programming and reprogramming of an article’s PROMs and EPROMs under 9802.00.50, HTSUS, only where the article’s performance characteristics after such foreign processing are upgraded and enhanced, and the exported article’s handling and uses have not been changed from that which earlier prevailed. It is your view that these prior rulings are distinguishable from the copier at issue since the foreign processing of the model B altered its handling and uses over that which earlier prevailed, and the replacement and reprogramming of the EPROMS created a new and different article of commerce with attributes and functions that are unique to the model C.

Counsel claims that major components of the Imaging, Optics, Image Fixing, and Paper Handling systems were not replaced during the change from a Model B to a Model D. Counsel states that both models are referred to as “indirect process electrophotostatic copiers,” and that the model B was modified to add certain document handling features if not previously added, plus paper level indicators on the paper supply drawers. Counsel states that there was also a substitution of the existing document feeder with one that provided enhanced paper handling features. The existing toning station and film cleaning assembly was replaced to provide enhanced image quality, while the latch on the feeder was replaced with one that operates more smoothly to accommodate disabled individuals. A panel which displays updated operating messages was installed in place of the display pan-

el found on the exported article. Six EPROMs were erased and reprogrammed to accommodate the updated operating instructions.

We note that under Additional Note 5, Chapter 90, HTSUS, copier assemblies are grouped as follows: (a) Imaging assemblies; (b) Optics assemblies; (c) User control assemblies; (d) Image fixing assemblies; (e) Paper handling assemblies; and (f) Combination of the above specified assemblies. In our opinion, the order of the listed assemblies, (a) through (e), reflected in U.S. Note 5, is indicative of their significance to the copier. We note that the major components of a typical high volume photocopier include the photoconductor, a primary charger, and systems for exposure, toning, transfer, erasing, and cleaning. *McGraw Hill Encyclopedia of Science & Technology*, Vol. 13 (1987). We also note that cartridges and developer, fuser rollers and oil, the photoconductor belt, and cleaning brush are consumables which are replaced approximately every 300,000 copies (except for the cartridges which are replaced about every 10,000 copies). Therefore, for purposes of our determination of eligibility for subheading 9802.00.50, HTSUS, treatment, we have focused upon the effect of the operations performed abroad upon the above copier assemblies.

Repairs are operations aimed at restoring articles to their original condition, but cannot be so extensive as to destroy the identity of the exported article or to create a new and different article. *Press Wireless, Inc. v. United States*, 6 Cust. Ct. 102, C.D. 438 (1941). In *Press Wireless*, the court found that radio tubes or valves replaced with heavier filaments, allowing heavier amperage, were "repaired" within the meaning of paragraph 1615, Tariff Act of 1930 (a precursor provision of subheading 9802.00.50, HTSUS). Additionally, the court found that the identical tubes were returned in a "condition of restoration to their original efficiency", and noted that an automobile repaired with materials of a heavier and superior quality than the worn-out parts would still be the same automobile, and that a fur coat relined with a superior material would still be the same coat. The court held that the use of improved materials in the restoration was immaterial, as long as the article was not considered a new and different article of commerce or its identity was destroyed. However, in *C.J. Tower & Sons of Niagara, Inc. v. United States*, C.D. 2208, 45 Cust. Ct. 111 (1960), cotton drills were exported and subjected to multiple operations, including dyeing and finishing. The cotton cloth returned to the U.S. was denied the partial duty exemption as the court determined that the merchandise exported was changed in color, width, length, porosity, in the distribution of the threads in the weave, in weight, tensile strength, and suppleness by the foreign processing. In holding that the foreign processing constituted more than an alteration, the court found that the returned merchandise was a new and different article having materially different characteristics and a more limited and specialized use.

In previous rulings, we have held that subheading 9802.00.50, HTSUS, will be applicable to articles disassembled for repairs, where repairs are made and parts are replaced as long as the essential components and, therefore, the identity of the article remains intact throughout the repair process. See HRL 557991 dated October 17, 1991.

In HRL 558858/558859 dated March 11, 1996, Customs considered seven models of used copier "hulks" which were repaired, upgraded, and/or modified in Mexico. In each case, the frame of the "hulk" remained intact, and the components such as the wiring harnesses, optics assemblies, printed circuit boards, and other electronic subassemblies remained assembled to the hulk at all times. The operations performed in Mexico involved removing the covers, feeder assembly, fuser, developer housing, xerographic motor, control panel, bypass, platen glass, coronator, copy cartridge and bypass tray assembly. The covers were sanded and painted, and the platen glass and other nonrepairable parts were scraped. Next, the fuser, developer housing and bypass were sent to subassembly stations for repair. The partially torn-down hulk was then sent to an assembly and repair area where the enabler, low and high voltage power supplies, power cord, main printed wiring board assemblies (pwba), paper size pwba, feeder motor, copy cartridge, counter solenoid, counter, balance spring, half rate cartridge, and front/rear rail were removed, repaired, and reassembled along with the previously removed parts.

During the period of 1992-1993, in HRL 558858/558859, the frames, optics, wiring harnesses, optical control boards, optical drive motor, noise filter, fans, blower, discharge lamp, lower cover base, paper feeder motor, ac driver and sensor pwbas, and the low and high voltage power supplies were left intact on the hulk. During the period of 1993-1995, the paper feeder motor, ac driver and sensor pwbas and the low and high voltage power supplies were removed from the hulk frame during the repair and assembly process. How-

ever, such parts were identified by bar code, and new parts were either used if required, or the used repaired parts were returned to the same model number. It was found that the essential components of the copiers remained intact throughout the repair process, and did not lose their identity as a result of the Mexican operations.

In HRL 5558858/558859, the EPROMS contained in the copier's control panel were replaced or reprogrammed so that the copier could perform upgraded tasks, such as operating a noise reduction package or an automatic stapler. In regard to the replacement or reprogramming of the EPROMS, which upgraded the copiers to conform to current industry standards, in HRL 558858/558859, it was determined that this did not change the identity of the exported articles, but rather improved the product and advanced its value. Accordingly, the copiers qualified for subheading 9802.00.50, HTSUS, treatment.

As noted above, in this case the major components include the photoconductor, a primary charger, and systems for exposure, toning, transfer, erasing, and cleaning. In this case, a completely new toner and developer assembly, new LED erase bar, and an upgraded cleaning housing along with a scavenger were installed. It is our opinion that these are substantial changes to the Imaging Assemblies. Accordingly, we find, especially in conjunction with the other changes made to each of the major systems of the photocopier, that the identity of the exported photocopier was destroyed and that a new and different photocopier was created. While the use of the returned photocopier is the same, i.e., to make copies, it possesses a different name (model D) and characteristics (especially noteworthy, better copy quality as counsel indicates), which targets the model D towards a different market. The fact that the returned photocopier may be classified in the same HTSUS provision is not determinative of whether the essential identity remains the same. See *Dolliff & Company, Inc. v. United States*, 599 F.2d 1015, 66 C.C.P.A. 77, 83 (1979). Accordingly, it is our opinion that since the essential identity of the exported model B copiers has not been maintained in the returned model D copiers, they are not eligible for duty-free treatment under subheading 9802.00.50, HTSUS. We also note that the record does not contain any of the documents required by 19 CFR 181.64(c).

In this case it was also indicated that numerous "worn components" were replaced. As we have already determined that the model D copiers are not eligible for subheading 9802.00.50, HTSUS, treatment, we do not need to address whether the replacement of these worn components changes the identity of the returned copiers. It is also our opinion, however, that the replacement of numerous components in each major assembly of the model copier in this case has the cumulative effect of changing the identity of the returned copier to such an extent that they would not be eligible for subheading 9802.00.50, HTSUS, treatment even if these operations were the only ones performed abroad.

Holding:

On the basis of the information submitted, it is our opinion that the Mexican operations enumerated above did not constitute repairs or alterations" since the essential identity of the copiers was not retained. Therefore, the model D copiers are not eligible for the full duty exemption under subheading 9802.00.50, HTSUS.

This decision should be mailed by your office to the internal advice requester no later than 60 days from the date of this letter. On that date the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service. Freedom of Information Act and other public access channels.

SANDRA GETHERS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, March 21, 1997.
CLA-2 RR:TC:SM 560006 BLS
Category: Classification
Tariff No. 9802.00.50

PORT DIRECTOR
Los Angeles, CA 90731

Re: Applicability of subheading 9802.00.50, HTSUS, to photocopying machines HRL 558858/558859; HRL 554731; essential identity.

DEAR SIR:

This is in reference to a letter dated June 17, 1996, with enclosures, on behalf of Eastman Kodak Company ("Kodak"), requesting a ruling that certain copiers shipped to Mexico will be eligible for the duty exemption under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), upon return to the U.S. Additional information was furnished by counsel in letters dated December 6 and December 18, 1996. The concerned import specialist also advises that entries of the subject copiers are currently being made through your port.

Facts:

Kodak intends to send to Mexico certain copiers ("Model C") which are no longer operational for repairs and modifications. When the operations are completed, the copiers will be returned to the U.S. ("Model D").

The following operations are stated to be performed in Mexico:

The process begins with evaluating the incoming copier and its subassemblies. The unit is then partially disassembled, and the mainframe, parts, and subassemblies proceed to work stations where they are cleaned, worn parts are replaced or repaired, lubrication is applied, and any necessary testing is completed. All copiers have their cabinetry repainted in Mexico, but parts will generally be repaired or replaced only as needed. Kodak states that in the interest of customer satisfaction and decreased cost, certain parts which may otherwise be replaced during field servicing of the machines, such as belts, bearings, developer loops and image loops, which have limited lives, are also replaced at this time. Pursuant to the flow chart accompanying the submission, the following is performed:

Station 10—Cabinetry is removed and repainted.

Station 20—Major subassemblies are removed, including blowers, chargers, paper supply, and muffler box. These subassemblies are critical to the function of the paper supply and feeders. Minor subassemblies are also removed. Parts are replaced as required. For example, in the charger assembly, components which will be replaced include the corona wires, the primary charger, and the grill. Worn-out rollers which start the movement of the image loop around the film core area are also replaced.

Station 30—The mainframe undergoes required modifications, and cleaning.

Station 35—Wiring and wiring harnesses are removed and replaced as required.

Station 40—At this station, the main drive is reconditioned, and other work is performed relating to illumination, fuser area core, and the optics subassembly.

Station 45—Cabinetry and feeder are installed and a functional test is performed.

Station 120—Feeder and paper run cabinetry are set up, and after certain other finishing steps are performed, the copiers are packed and sent out for distribution.

The modifications performed on the copiers are as follows:

- 1) The toning station (toner and developer assembly) is replaced with a new toning station to provide enhanced image quality. The function of the toning assembly is to receive toner from a bottle and pass it to the image loop for transfer onto the paper on which the image results. Kodak states that the key components in the old version are a replenisher housing and motor, station sump casting, two developer rollers with two magnet rollers, two mixing blenders and miscellaneous gears, bearings and hard-

ware. The new version has only one developer roller and one magnet roller. It allows for a different formulation of the developer because the formulation carrier size is reduced in the new version to a much decreased size. Additionally, in the old version, the magnetic properties are soft and not permanent while they are hard and permanent in the new version. Lastly, the developer roller is 200" from the image loop in the old version and .020" in the new version. Kodak states that these alterations enhance the image quality.

2) Paper level indicators are added to the paper supply drawers which help the customer to determine the amount of paper in each drawer without having to stop the copier while it is running,

3) An improved latch is added to the document feeder allowing for smoother operation; and

4) New trade dress is applied.

These modifications require certain wiring alterations, which include holes added to the mainframe to accommodate the new wiring harnesses, and the reprogramming of six EPROMS. An additional energy saving feature is also added to the software. Kodak states that with regard to the Optics Assembly, the platen glass is replaced and the illumination housing is repaired but the optics and lens and mirror assemblies are left intact.

Kodak also advises that the roller mechanism around the film core and portions of the charging system are not routinely replaced unless specific parts are worn. The bodies are repaired and the plastics replaced. Further, it is stated that the operations that take place in Mexico do not include any sophisticated calibrations, and those components that will not be changed, in addition to the optics and related assemblies previously noted, include the Fuser Frame (Image Fixing), Film Core Structure (Imaging) and Document Feeder Frame (Paper Handling).

Upon completion of the repair and modification operations at the various workstations, the parts, subassemblies, and mainframe are moved to a functional checkout work station where the operator reassembles the copier and performs a complete functional test. Next, the copier goes to a quality audit work station to receive a quality performance test. Lastly, the copier is packed and returned to the U.S. for distribution.

Kodak states that the partially disassembled copier has unique identifiers so that the parts can be reassembled with matched subassemblies after the reconditioning processes are completed. Therefore, the reassembly process keeps together subassemblies which have been "mated" at the time of original manufacture, and no commingling with parts of other copiers takes place.

Issue:

Whether the operations performed in Mexico, which include the reprogramming of the EPROMS to provide for a new toning station and paper level indicators, and the replacement of a primary charger, constitute "repairs and alterations" under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS).

Law and Analysis:

Subheading 9802.00.50, HTSUS, provides a complete or partial duty exemption for articles returned to the U.S. after having been exported to be advanced in value or improved in condition by means of repairs or alterations. Articles returned to the U.S. after having been repaired or altered in Mexico, whether or not pursuant to a warranty, and goods returned after having been repaired or altered in Canada pursuant to a warranty, are eligible for duty-free treatment, provided the documentation requirements of section 181.64, Customs Regulations (19 CFR 181.64), are satisfied. In particular, the documentation required included a declaration from the person who performed the repairs or alterations, which described the operations performed and the value and cost of such operations, and which includes a statement that "no substitution whatever had been made to replace any of the goods originally received."

Entitlement to the benefits of subheading 9802.00.50, HTSUS, are precluded in circumstances where the operations performed abroad destroy the identity of the articles or create new or commercially different articles. See *A.F. Burstrom v. United States*, 44 CCPA 27, C4D. 631 (1956); *Guardian Industnes Corp. v. United States*, 3 CIT 9 (1982). Tariff treatment under subheading 9802.00.30, HTSUS, is also precluded where the exported articles are incomplete for their intended use prior to the foreign processing. *Guardian; Dolliff & Company, Inc. v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F. Supp. 618 (1978), *afPd*, 66 CCPA 77, C4D. 1225, 82, 599 F.2d 1015, 1019 (1979).

In *Press Wireless v. United States*, 6 Cust. Ct. 102, C.D. 438 (1941), the Customs Court held that repairs are operations necessary to restore articles to their original condition, but cannot be so extensive as to destroy the identity of the exported article or create a new or different article. (See also 19 CFR 181.64, which defines “repairs or alterations” as the restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the U.S.)

In previous rulings, we have held that subheading 9802.00.50, HTSUS, will be applicable to articles subject to both partial and complete disassembly, where repairs are made and parts are replaced as long as the essential components and therefore the identity of the article remain intact throughout the repair process. For example, in HRL 554731 dated February 2, 1989, Customs considered fuel injectors which involved the replacement of parts and cleaning after disassembly. Customs determined that the fuel injectors qualified for subheading 9802.00.50, HTSUS, treatment, as long as the adapter and retainer of the fuel injector were not replaced and remained together as a matched set, as these constituted the essential identity of the fuel injector.

We note that under Additional Note 5, Chapter 90, Harmonized Tariff Schedule of the United States (HTSUS), copier assemblies are grouped as follows: (a) Imaging assemblies; (b) Optics assemblies; (c) User control assemblies; (d) Image fixing assemblies; (e) Paper handling assemblies, and (f) Combination of the above specified assemblies. In our opinion, the order of the listed assemblies, ((a) through (e)), reflected in U.S. Note 5, is indicative of their significance to the copier. Major components of a typical high-volume copier include the photoconductor, a primary charger, and systems for “exposure, toning, transfer, erasing, and cleaning. *McGraw Hill Encyclopedia of Science & Technology*, Vol. 13 (1987). Accordingly, for purposes of determining eligibility of the returned copier for subheading 9802.00.50, treatment, we have focused upon the effect of the operations performed abroad upon the above copier assemblies.

In HRL 558858/558859 dated March 11, 1996, Customs considered seven models of used copier “hulks” which were repaired, upgraded, and/or modified in Mexico. In each case, the frame of the “hulk” remained intact, and components such as the wiring harnesses, optics assemblies, printed circuit boards, and other electronic subassemblies remained assembled to the hulk at all times. The operations performed in Mexico involved removing the covers, feeder assembly, fuser, developer houser, xerographic motor, control panel, bypass, platen glass, coroton, copy cartridge, and bypass tray assembly. The covers were sanded and painted? and the platen glass and other non-repairable parts were scrapped. Next, the fuser, developer houser and bypass were sent to subassembly stations for repair. The partially torn-down hulk was then sent to an assembly and repair area where the enabler, low and high voltage power supplies, power cord, main printed wiring board assemblies (pwba) paper size pwba, feeder motor, copy cartridge, counter solenoid, counter, balance spring, half rate cartridge, and front/rear rail were removed, repaired, and reassembled along with the previously removed parts.

During the period of 1992–1993, in HRL 558858/558859, the frames, optics, wiring harnesses, optical control boards, optical drive motor, noise filter, fans, blower, discharge lamp, lower cover base, paper feeder motor, ac driver and sensor pwbas, and the low and high voltage power supplies were removed from the hulk frame during the repair assembly process. However, such parts were identified by bar code, and new parts were either used if required, or the used repaired parts were returned to the same model number. It was found in that case that the essential components of the copiers remained intact throughout the repair process, and did not lose their identity as a result of the Mexican operations.

In HRL 558858/558859, the EPROMS contained in the copier’s control panel were replaced or reprogrammed so that the copier could perform upgraded tasks, such as operating a noise reduction package or an automatic stapler. In regard to the replacement or reprogramming of the EPROMS, which upgraded the copiers to conform to current industry standards, we determined that this did not change the identity of the exported articles, but rather improved the product and advanced its value. Accordingly, we found in that case that the copiers qualified for subheading 9802.00.50, HTSUS, treatment.

As noted above, the major components of a high volume copier include the photoconductor, a primary charger, and systems for exposure, toning, transfer, erasing, and cleaning. In this case, the toning station and primary charger are replaced with a new toner and developer assembly which produces a superior print quality and a new primary charger.

We consider these replacements to be significant changes to those systems which give the copier its essential identity. We further note that other changes are made which include a new paper level indicator, which is part of the paper handling assembly.

As a result of these changes, we find that the essential identity of the exported photocopier is lost and that a new and different photocopier was created. While the use of the returned photocopier is the same, i.e., to make copies, it possesses a different name (Model D) and characteristics, including higher print quality, which may target the Model D copier towards a different market. The fact that the returned photocopier may be classified in the same HTSUS provision is not determinative of whether the essential identity remains the same. *See Dolliff & Company, Inc. v. United States*, 599 F.2d 1015, 66 CCPA 77, 83 (1979). Accordingly, it is our opinion that since the essential identity of the exported Model C copiers has not been maintained in the returned Model D copiers, they are not eligible for duty-free treatment under subheading 9802.00.50, HTSUS.

Holding:

On the basis of the information submitted, it is our opinion that the operations performed in Mexico on the copiers do not constitute "repairs or operations" since the essential identity of the copiers was destroyed. Therefore, the Model D copiers are not eligible for duty-free treatment under subheading 9802.00.50, HTSUS.

Please provide a copy of this decision to Susan Kohn Ross, Esq., Ross & Associates, 5777 West Century Blvd., Los Angeles, CA 90045-1017.

SANDRA L. GETHERS,
(for John Durant, Director,
Tariff Classification Appeals Division.)

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, December 17, 1996.
CLA-2 RR:TC:SM 559672 MLR
Category: Classification
Tariff No. 9802.00.50

PORT DIRECTOR
U.S. CUSTOMS SERVICE
610 W. Ash St.
San Diego, CA 92188

Re: Internal Advice; applicability of duty exemption under HTSUS subheading 9802.00.50 to Kodak Model D copier; Mexico; 19 C.F.R. §181.64(c).

DEAR SIR/MADAM:

This is in reference to a letter dated January 8, 1996, from Ross & Associates, requesting a ruling on behalf of Eastman Kodak Company ("Kodak"), concerning the applicability of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), to photocopiers imported from Mexico. A meeting was held at the Office of Regulations & Rulings on April 22, 1996, and charts and photographs were submitted at that time.

Facts:

It is stated that Kodak exported used model F copier-duplicators to Mexico, performed various processes to these copiers, and imported model D copier-duplicators to the U.S. It is claimed that the processes performed in Mexico were "repairs and alterations" and that the returned articles qualified for duty-free entry under subheading 9802.00.50, HTSUS. Before describing the processes performed to make a model F into a model D, counsel states that the processes performed were similar to those performed in converting a model B to a model D, which in turn are similar to the processes performed on a model B when it became a model C, and which involve those operations performed to the model B when it remained a model B.

The model B processes performed when there is no change in model number involve disassembling the copiers, cleaning them, and replacing worn parts. It is also stated that if there was an engineering enhancement, newer model parts were installed to replace old and outdated ones. The disassembled subassemblies were routed through subassembly work stations with unique identifiers so that the repaired subassemblies could be installed into the same copier during the reconditioning phase. According to counsel, the Mexican plant did not perform optical alignments; therefore, the reassembly process kept subassemblies together which had been mated at the time of original manufacture. The copier underwent a set-up and test process and the cabinetry was reinstalled. It is alleged that the reconditioned model B copier was returned to the U.S. without change to its essential components (the image capture system (lenses and film handling assembly)). Both of the copiers are stated to be referred to as "indirect process electrophotostatic copiers," and six Erasable Programmable Read-Only Memory chips ("EPROMS") were erased and reprogrammed to accommodate updated operating instructions.

Next, counsel presents the processes performed to convert a model B to a model C. It is stated that none of the operations sped up the photocopier or altered the type or size of paper the copier is able to process. Speed and paper size and type are stated by protestant to be the criteria in the marketplace to determine whether or not a copier has been upgraded. The only features which appeared on the model C which did not appear on the model B were the specific document feeder and the Pressure Assist Corona Transfer (PACT). The document feeder incorporates a semi-automatic positioning feature. The PACT modification keeps the paper flatter as it works its way through the imaging process but allegedly does not change the copier's function. When the document feeder was installed, it required a modification to the static eliminator harness in the duplex tray and the positioner interlock harness in the cabinetry as the remaining internal space was diminished. As a result, a new wire harness was inserted to make the static eliminator smaller.

Counsel also states that new circuit boards were substituted whether or not the processes resulted in a change in model number. However, the model C required different circuit boards. The existing EPROMS were reprogrammed and the input/output boards were modified by soldering an additional wire which allowed the machine to operate either as a model B or a model C. The EPROMS reprogramming supposedly arose to accommodate the new document feeder.

Counsel states that the additional steps taken which resulted in a model D from a model F were that the model B toning station was replaced with a new toning station which enhanced the image quality. The paper level indicators were added to the paper supply drawers to help customers determine the amount of paper in each supply drawer without having to stop copier operations. An upgraded trimodal document feeder was installed including an improved latch to allow for smoother operation. There was also a new trade dress.

In addition, counsel states that there were a few minor steps added to the normal reconditioning process. Holes were added to the mainframe to accommodate new harnesses. There was also the installation of a reprogrammed set of six EPROMS to allow the software to relate to all of the new functions, plus an additional energy saving feature was added to the software. The principle differences stated by counsel between the model F to model D process (the subject of this request), and the model B to model D process was that the paper supply was modified to allow for automatic duplexing which resulted in the addition, as well, of a duplex tray and the inclusion of duplex paper path assemblies; the copier speed was enhanced from 70 to 85 copies per minute by the replacement of three sprockets and a chain; and a noise reduction was achieved through the addition of a muffler in the vacuum system and a damper from the paper stop gate.

In addition, counsel states that some additional steps occurred during the model F to model D process. The registration assembly was altered to accommodate the addition of the PACT. Four new subassemblies were added to the new model configuration: document positioner hopper, paper supply cover, wireform and duplex tray. In the Logic and Control Unit, the EPROMS were erased and reprogrammed with the latest version of software, including an energy saving feature that puts the copier in stand-by mode. A 5-Volt regulator was also added for the stepper control circuitry. The developer station was replaced with a new high definition grain station which allows for superior image quality.

The Scuff bimodal document feeder was replaced with a new trimodal document feeder that incorporated a semi-automatic positioner. The copier main harness was replaced in order to accommodate the model D features. Components, such as the main drive motor

sprocket, clutch and developer drive sprocket assembly were replaced to speed up the copier's performance. The vacuum system was also modified to incorporate the ability to automatically duplex, accommodate heavier paper sizes, and reduce noise levels through the addition of a muffler. The chart of the model F to model D process indicates that in regard to the Imaging Assemblies, the film belt and worn components were replaced, and a new LED erase bar was installed in the photoreceptor belt and handling assembly; a new toner and developer assembly was installed; worn components were replaced in the charging assemblies; and an upgraded cleaning housing was added and a new scavenger was installed in the cleaning assembly.

On November 27 and December 6, 1996, counsel provided additional explanations of certain operations in response to our request. It is stated that the IQE station slider, plenum assembly build, backup slider assembly, and assembly drive roller were the worn components that were replaced in the photoreceptor belt and handling assembly. The IQE station slider basically allows the developer assembly to be removed from the machine without disassembling the machine. The new model of the plenum assembly build installed into the model D uses hoses and ducts instead of magnets to collect excess toner flakes and developer from the film loop. The backup slider assembly moves the image loop toward the developer roller when actuated. The assembly drive roller starts the movement of the image loop around the film core area, and it is stated that worn out rollers are replaced and the same rollers are used regardless of the resulting finished model.

In regard to the charging assemblies, the information received on December 6 indicates that the worn components replaced are those which naturally wear out during normal copier operations, such as the corona wires (provides the charge to the image loop), the primary (gives off the charge), and the grill (takes the charge from the corona wire and discharges it over the loop).

In regard to the toner and developer assembly, it is indicated that the major parts are a toner container, replenisher, developer, and magnet rollers, a gear box, sump casting and drive shaft plus a toner concentration monitor and miscellaneous gears, bearings and hardware. In some instances, it is stated that a scavenger is present. It is stated that the configuration and number changes depending on the specific finished copier model involved and that the function of the toner and developer assembly is to receive toner from a bottle and pass it to the image loop for transfer onto the paper on which the image results.

In regard to the cleaning housing, the information received December 6 indicates that its function is to eliminate contamination on the film path, and that its major part is a casting. The model F casting was plastic, while the model D casting is aluminum. In regard to the LED erase bar, it is indicated that it erases residual information on the image loop between copies.

In regard to the Optics Assemblies, the chart indicates that the platen glass was replaced and a new platen frame was installed in the platen glass and illumination housing; and worn components were replaced in the lens/mirror assembly. The information received on December 6 indicates that the worn components replaced in the lens/mirror assembly are mechanical ones, such as the timing belts and pulleys which slide the lens assembly on its guides by means of a high precision motor during the imaging process. It is also stated that if a lens/mirror is scratched or broken, the lens or mirror itself will be replaced.

In regard to the User Control Assemblies, the chart indicates that worn components and a new display panel with a new color scheme were replaced in the operator control panel assembly. In regard to the Image Fixing Assemblies, the fuser and pressure roller and worn components were replaced in the fusing assembly.

In regard to the Paper Handling Assemblies, the chart indicates that a new document feeder/positioner assembly was made reusing some components, which incorporated an automatic duplexing and semi-automatic positioning feature; a new paper supply assembly was made reusing some components and an improved feeding system and paper level indicators were installed; worn components, PACT modification, and a multifeed detection was added to the registration assembly; a new duplex paper path assembly was added; worn components and the vacuum and upper transports were replaced in the transport assemblies; worn components were replaced in the vacuum system, and heavy duty blowers were converted to handle heavy weight paper; valves were replaced for automatic duplexing, and a muffler was installed to reduce noise. The information received December 6 indicates that shafts, rollers, wire forms, solenoids, and sensors (in the duplex tray) are replaced in the transport assemblies.

In regard to the logic and control unit, the chart indicates that the EPROMS were reprogrammed; the control unit was modified; and a stepper control was added to accommodate automatic duplexing. Additionally, change occurred to the color scheme, the top cover was modified, and a tray assembly and side hopper were installed to accommodate the positioner. Pulleys and sprockets were replaced to speed up the unit from 70 to 85 copies per minute.

As indicated above, the scavenger was replaced in the cleaning assembly with one of a more efficient design. In a letter dated December 21, 1994, counsel explains that the scavenger system is designed to remove any residual toner or carrier left on the image medium. Its purpose is to make clearer copies. At the time the letter was written, it was indicated that due to design flaws the new scavenger system was not used.

Since counsel noted that the processes in making a model D were similar to those in making a model C, your office's concerns over the model B to model C processes are noted. Your office states that the model B did not possess the necessary mechanical hardware, circuitry, document positioner, tri-modal feeder, auto-sizing capabilities, PACT and programming required for the model C to exist. Your office states that the model B was known as a copier-duplicator, while the model C was known as an offset copier-duplicator. The model C's tri-modal feeder takes normal paper weights and sizes automatically through the recirculating feeder, or it copies odd size and weight originals through the semi-automatic positioner, or it allows for manual copying. The auto-sizing capabilities reduce the image size of the original to fit the selected paper supply, and it is capable of offset stacking.

Thus, your office disagrees with counsel that the only features on the model C that were not on the model B copier, were the document feeder and PACT. Your office states that the PACT is not a simple mechanical device which holds a piece of paper in place to enhance the quality of the copy produced during the imaging process, but rather its purpose is to aid in preventing white spots on the second side of duplex copies in low humidity environments. This modification not only enhanced the second side transfer characteristics by adding hardware, a solenoid, circuit board, harness, and a mylar flap, but further contributed to the creation of the model C with its tri-modal feeder and new document positioner.

Your office states that the registration assembly (mechanical) was altered to accommodate the addition of the PACT, if the model B received from the U.S. did not already have this modification installed. Registration assembly was done by installing a new circuit board and wire harness in the main frame. A paper supply cover and a document positioner hopper were created to guide and capture originals because the model C is a tri-modal feeder. The EPROM reprogramming contained the latest software enhancements made to the model B software plus contained the additional feature of auto paper size reduction.

Issue:

Whether the conversion of a Kodak Model F copier to a Kodak Model D copier constituted a repair or alteration within the meaning of subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS), thereby qualifying the returned Model D copier for the duty exemption under this tariff provision.

Law and Analysis:

Articles exported from and returned to the U.S., after having been advanced in value or improved in condition by repairs or alterations in Mexico, may qualify for a duty exemption under HTSUS subheading 9802.00.50, provided the foreign operation does not destroy the identity of the exported articles or create new or commercially different articles through a process of manufacture. See *A.F. Burstrom v. United States*, 44 CCPA 27, C.A.D. 631 (1956), aff'g C.D. 1752, 36 Cust. Ct. 46 (1956); *Guardian Industries Corp. v. United States*, 3 CIT 9 (1982). Articles are entitled to this duty exemption provided the documentary requirements of section 181.64(c), Customs Regulations (19 C.F.R. §181.64), are satisfied. In particular, the documentation required includes a declaration from the person who performed the repairs or alterations, which describes the operations performed and the value and cost of such operations and which includes a statement that "no substitution whatever has been made to replace any of the goods originally received." "Repairs or alterations" are defined in 19 C.F.R. §181.64 as the restoration, addition, renovation, re-dyeing, cleaning, re-sterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the U.S.

Since counsel has indicated that the processes involved in the conversion of a model B to a model C are similar to those when a model F is made into a model D, your office's con-

cerns over the model B to model C process are noted. Your office contends that rulings allow for programming and reprogramming of an article's PROMs and EPROMs under 9802.00.50, HTSUS, where the article's performance characteristics upon foreign processing are upgraded and enhanced, and do not alter the exported article's handling and uses over that which earlier prevailed. It is your view that these rulings are distinguishable from the copier at issue since the foreign processing of the model B altered its handling and uses over that which earlier prevailed, and the replacement and reprogramming of the EPROMS created a new and different article of commerce with attributes and functions that are unique to the model C. We note that under Additional Note 5, Chapter 90, HTSUS, copier assemblies are grouped as follows: (a) Imaging assemblies; (b) Optics assemblies; (c) User control assemblies; (d) Image fixing assemblies; (e) Paper handling assemblies; and (f) Combination of the above specified assemblies. In our opinion, the order of the listed assemblies, (a) through (e), reflected in U.S. Note 5, is indicative of their significance to the copier. We note that the major components of a typical high-volume photocopier include the photoconductor, a primary charger, and systems for exposure, toning, transfer, erasing, and cleaning. McGraw Hill Encyclopedia of Science & Technology, Vol. 13 (1987). We also note that cartridges and developer, fuser rollers and oil, the photoconductor belt, and cleaning brush are consumables which are replaced approximately every 300,000 copies (except for the cartridges which are replaced about every 10,000 copies). Therefore, for purposes of our determination of eligibility for subheading 9802.00.50, HTSUS, treatment, we have focused upon the effect of the operations performed abroad upon the above copier assemblies.

Repairs are operations aimed at restoring articles to their original condition, but cannot be so extensive as to destroy the identity of the exported article or to create a new and different article. *Press Wireless, Inc. v. United States*, 6 Cust. Ct. 102, C.D. 438 (1941). In *Press Wireless*, the court found that radio tubes or valves replaced with heavier filaments, allowing heavier amperage, were "repaired" within the meaning of paragraph 1615, Tariff Act of 1930 (a precursor provision of subheading 9802.00.50, HTSUS). Additionally, the court found that the identical tubes were returned in a "condition of restoration to their original efficiency", and noted that an automobile repaired with materials of a heavier and superior quality than the worn-out parts would still be the same automobile, and that a fur coat relined with a superior material would still be the same coat. The court held that the use of improved materials in the restoration was immaterial, as long as the article was not considered a new and different article of commerce or its identity was destroyed. However, in *C.J. Tower & Sons of Niagara, Inc. v. United States*, C.D. 2208, 45 Cust. Ct. 111 (1960), cotton drills were exported and subjected to multiple operations, including dyeing and finishing. The cotton cloth returned to the U.S. was denied the partial duty exemption as the court determined that the merchandise exported was changed in color, width, length, porosity, in the distribution of the threads in the weave, in weight, tensile strength, and suppleness by the foreign processing. In holding that the foreign processing constituted more than an alteration, the court found that the returned merchandise was a new and different article having materially different characteristics and a more limited and specialized use.

In previous rulings, we have held that subheading 9802.00.50, HTSUS, will be applicable to articles disassembled for repairs, where repairs are made and parts are replaced as long as the essential components and, therefore, the identity of the article remains intact throughout the repair process. See **HRL 557991** dated October 17, 1991.

In **HRL 558858/558859** dated March 11, 1996, Customs considered seven models of used copier "hulks" which were repaired, upgraded, and/or modified in Mexico. In each case, the frame of the "hulk" remained intact, and the components such as the wiring harnesses, optics assemblies, printed circuit boards, and other electronic subassemblies remained assembled to the hulk at all times. The operations performed in Mexico involved removing the covers, feeder assembly, fuser, developer housing, xerographic motor, control panel, bypass, platen glass, coroton, copy cartridge and bypass tray assembly. The covers were sanded and painted, and the platen glass and other non-repairable parts were scraped. Next, the fuser, developer housing and bypass were sent to subassembly stations for repair. The partially torn-down hulk was then sent to an assembly and repair area where the enabler, low and high voltage power supplies, power cord, main printed wiring board assemblies (pwba), paper size pwba, feeder motor, copy cartridge, counter solenoid, counter, balance spring, half rate cartridge, and front/rear rail were removed, repaired, and re-assembled along with the previously removed parts.

During the period of 1992–1993, in **HRL 558858/558859**, the frames, optics, wiring harnesses, optical control boards, optical drive motor, noise filter, fans, blower, discharge lamp, lower cover base, paper feeder motor, ac driver and sensor pwbas, and the low and high voltage power supplies were left intact on the hulk. During the period of 1993–1995, the paper feeder motor, ac driver and sensor pwbas and the low and high voltage power supplies were removed from the hulk frame during the repair and assembly process. However, such parts were identified by bar code, and new parts were either used if required, or the used repaired parts were returned to the same model number. It was found that the essential components of the copiers remained intact throughout the repair process, and did not lose their identity as a result of the Mexican operations.

In **HRL 558858/558859**, the EPROMS contained in the copier's control panel were replaced or reprogrammed so that the copier could perform upgraded tasks, such as operating a noise reduction package or an automatic stapler. In regard to the replacement or reprogramming of the EPROMS, which upgraded the copiers to conform to current industry standards, in **HRL 558858/558859**, it was determined that this did not change the identity of the exported articles, but rather improved the product and advanced its value. Accordingly, the copiers qualified for subheading 9802.00.50, HTSUS, treatment.

As noted above, the major components in this case include the photoconductor, a primary charger, and systems for exposure, toning, transfer, erasing, and cleaning. There are numerous changes, not only to the Paper Handling Assemblies, but a completely new toner and developer assembly, new LED erase bar, and an upgraded cleaning housing along with a scavenger were installed. It is our opinion that these are substantial changes to the Imaging Assemblies. Accordingly, we find, especially in conjunction with the other changes made to each of the major systems of the photocopier, that the identity of the exported photocopier was destroyed and that a new and different photocopier was created. While the use of the returned photocopier is the same, i.e., to make copies, it possesses a different name (model D) and characteristics (especially noteworthy, better copy quality as counsel indicates), which targets the model D towards a different market. Additionally, the copier D is able to produce two-sided copies. The fact that the returned photocopier may be classified in the same HTSUS provision is not determinative of whether the essential identity remains the same. See *Dolliff & Company, Inc. v. United States*, 599 F.2d 1015, 66 C.C.P.A. 77, 83 (1979). Accordingly, it is our opinion that since the essential identity of the exported model F copiers has not been maintained in the returned model D copiers, they are not eligible for duty-free treatment under subheading 9802.00.50, HTSUS. We also note that the record does not contain any of the documents required by 19 C.F.R. §181.64(c).

In this case it was also indicated that numerous “worn components” were replaced. As we have already determined that the model D copiers are not eligible for subheading 9802.00.50, HTSUS, treatment, we do not need to address whether the replacement of these worn components changes the identity of the returned copiers. It is also our opinion, however, that the replacement of numerous components in each major assembly of the model copier in this case has the cumulative effect of changing the identity of the returned copier to such an extent that they would not be eligible for subheading 9802.00.50, HTSUS, treatment even if these operations were the only ones performed abroad.

Holding:

On the basis of the information submitted, it is our opinion that the Mexican operations enumerated above do not constitute “repairs or alterations” since the essential identity of the copiers was not retained. Therefore, the model D copiers are not eligible for the full duty exemption under subheading 9802.00.50, HTSUS.

This decision should be mailed by your office to the internal advice requester no later than 60 days from the date of this letter. On that date the Office of Regulations and Rulings will take steps to make the decision available to Customs personnel via the Customs Rulings Module in ACS and the public via the Diskette Subscription Service, Freedom of Information Act and other public access channels.

JOHN DURANT,
Director,
Tariff Classification Appeals Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:SM 562513 TJM
Category: Classification
Tariff No. 9802.00.50

PORT DIRECTOR
U.S. CUSTOMS SERVICE
610 West Ash Street
San Diego CA 92188

Re: Revocation of HRL 560290; 9802.00.50 treatment to photocopiers; Kodak; essential identity; repair and alteration; 19 USC 1625(c).

DEAR PORT DIRECTOR:

This letter is to inform you that Customs has reconsidered Headquarters Ruling Letter (“HRL”) 560290, dated May 10, 2000, addressed to you, concerning the classification and eligibility of photocopiers exported to Mexico from the U.S. and returned for duty exemption provided under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS). After review of this ruling, we have determined that the operations in Mexico performed on certain Kodak copiers (“Model A”) resulting in “Model D” qualify as “repairs or alterations” as provided under 9802.00.50, HTSUS. For the reasons that follow, this ruling revokes HRL 560290.

Facts:

In HRL 560290, dated May 10, 2000, the facts indicated that Kodak or one of its customers exported used “model A” copier-duplicators which were no longer operational to Mexico, performed various processes to these copiers, and imported model D copier-duplicators to the U.S. It was claimed that the processes performed in Mexico were “repairs or alterations” and that the returned articles qualified for duty-free entry under subheading 9802.00.50, HTSUS. Other copier decisions Customs has issued include Headquarters Ruling Letter (HRL) 559405 dated July 11, 1996; HRL 559418 dated December 12, 1996; HRL 559483 dated October 17, 1996; HRL 559485 dated October 17, 1996; HRL 559672 dated December 17, 1996; HRL 559770 dated January 10, 1997; and HRL 560006 dated March 21, 1997.

The various submissions from your office and Kodak indicated that the conversion from a model A to a model D involved the following operations:

1. The toning station (also referred to as the developer station) was replaced with a new toning station to provide enhanced image quality. Kodak stated that the toning station on the model D operates more efficiently by repositioning the developer roller closer to the image loop, incorporating an internal scavenger which attracts the developing solution, and changing the rotation of the toning roller with respect to the direction of the image loop. The new toning station also permitted the use of an improved developer and more refined toner.
2. Paper level indicators were added to the paper supply drawers to help the customer determine the amount of paper in each drawer without having to stop operations. These are stated to simply be a series of LEDs mounted on the outer front panel which receive electrical signals from the various paper supplies indicating the amount of paper remaining in each drawer.
3. A new tri-modal document feeder was added, including an improved latch, allowing for smoother operation.
4. New trade dress was applied.
5. The copier speed was enhanced from 70 to 85 copies per minute by replacing three sprockets and a chain.
6. Noise was reduced by adding a muffler in the vacuum system and a damper from the paper stop gate.

In addition, the following description of some of the operations performed at various stations was provided:

Station 10: Cabinetry and feeder removal:

The top hopper, feeder cover, and logic molding covers were replaced with new panels. All other panels were reused but painted a different color.

Station 30: Tear down, main frame alterations and cleaning:

Drilling operations were performed to the main frame to accommodate harness modifications and unique components of the model D.

Subassemblies:

The registration assembly was altered to accommodate the addition of the Pressure Assist Corona Transfer (PACT) modification. The PACT modification was stated to keep the paper flatter as it works its way through the imaging process, but allegedly does not change the copier's function. Two new subassemblies were added, a document positioner hopper and a paper supply cover. In the logic and control assembly, the EPROMs were erased and reprogrammed with new software, including an energy saving feature that puts the copier in stand-by mode. The developer station was totally replaced with a new high definition grain station, which allows for superior image quality. The document feeder was replaced with a trimodal feeder that incorporates a semi-automatic positioner.

Station 35: Wiring:

The copier main harness was modified to accommodate the model D new features.

Station 40: Main frame reassembly:

Some main frame components were replaced such as the main drive motor sprocket, clutch, and developer drive sprocket assembly to speed up the copier's performance. The vacuum system is modified to incorporate the ability to automatically duplex, accommodate heavier paper sizes, and reduce noise levels through the addition of a muffler. Two circuit boards were replaced on the operator control panel to include new features of the model D.

Because of design changes, new parts like a solenoid, wire harness, and circuit boards were tested for electrical safety.

Station 120: Functional set up and testing:

Set-up and testing were performed to verify the function of the document positioner, wireform, duplex tray, and new developer station assemblies.

On January 15, 1998, two videos and a "key attributes matrix" were submitted showing the two models side-by-side and breaking down a copier into 185 attributes Kodak has identified as key to a copier. The similarities and differences between the two models were explained by focusing on the key subassemblies referred to in Additional Note 5, Chapter 90, HTSUS. The matrix showed many of the features to be the same. The differences included a change in copy speed. In the Imaging Assemblies, the changes were the removal of one electrically conductive magnetic roller, and a change in the bias voltage applied to the development mechanism. A change in voltage and magnetic rollers was done to improve development of half tones and image resolution. Although this change altered and improved the imaging process, it was stated that the majority of the imaging technology and hardware remained the same. In the cleaning/erasing assembly, there was a new LED front side interframe erase bar, and a new vacuum magnetic scavenger roller assembly. A distinction between the two models was that in the model A, the bar was located to illuminate the back side of the film loop, whereas on the model D, the bar is located on the front side of the film loop. Both features serve the same function. Relocation in the model D was necessary to make space for the modified developer station. In the charging assembly, the original transfer was not pressure assisted so a PACT (Pressure Assisted Corona Transfer) was added. No differences were claimed between the two models in the Optics or Image Fixing Assemblies. In the User Control assemblies, there was one difference, the color of the LEDs. In the paper handling assemblies, the only difference between the two models was that model A had no paper level indicators. What is unique to the model A was its trade dress and the height of the operator control panel. Otherwise, it was stated that the two models were the same in terms of their features and characteristics. Of the 185 characteristics listed, 174 were stated to be the same, 11 were new in the model D, and 2 were unique to the model A.

In previous Kodak submissions, it was indicated that the major parts in the toner and developer assembly are the toner container, replenisher, developer, and magnet rollers, a gear box, sump casting, drive shaft plus a toner concentration monitor and miscellaneous gears, bearings and hardware, and that the function of the toner and developer assembly is to receive toner from a bottle and pass it to the image loop for transfer onto the paper on which the image results.

In the meeting on January 27, 1998, Customs also requested more details concerning the repairs performed, as prior Kodak submissions indicated the replacement of "worn parts." Customs specifically requested a list of the parts that are replaced 100 percent of the time during the repair process.

In a letter from counsel for Kodak, dated March 10, 1998, it was stated that there are approximately 3,100 parts making up a copier and they are separated into three categories: A parts costing more than \$11.00 each; B parts costing between \$2.50 and \$11.00; and C parts costing less than \$2.50. Of the parts that are replaced 100 percent of the time, it was stated that there were 143 parts replaced with a value over \$2.50; the C parts were entirely omitted. Of the 143 parts, 9 parts were listed: wire harnesses, muffler boxes, fuser assemblies, paper supplies, IQE stations, blowers, cabinetry, logic control units, and registrations. After Customs request for a more detailed list, on April 7, 1998, it was stated that 124 out of a total of 877 A and B parts were replaced, and the following parts were listed: solenoids, filters, switches, sensors, brushes, actuators, paper feed rollers, clutches, chains, bearings, brackets, pulleys, belts, valves, hoses, guide plates, circuit boards, labels, motors, casters, panels, and springs. On April 20, 1998, a complete list of all 124 A and B parts replaced was submitted, in what the letter referred to as "engineering short-hand." Customs also requested information regarding whether a particular part was a consumable; however, this information was not provided. While the model A has a magnetic scavenger, when it was converted to the model D, the roller was replaced with a vacuum scavenger for the purpose of the reduction in image quality defects. The last difference between the two models was the addition of a document positioner. It allows the operator to feed single originals across the platen glass for imaging.

In regard to the previous Kodak submissions, your office stated that the exported copiers do not possess the necessary mechanical hardware, circuitry, document positioner, tri-modal feeder, auto-sizing capabilities, PACT and programming required by the imported copier. Your office stated that the tri-modal feeder takes normal paper weights and sizes automatically through the recirculating feeder, or it copies odd size and weight originals through the semi-automatic positioner, or it allows for manual copying. The auto-sizing capabilities reduce the image size of the original to fit the selected paper supply, and it is capable of offset stacking. The PACT is also not a simple mechanical device which holds a piece of paper in place to enhance the quality of the copy produced during the imaging process, but rather its purpose is to aid in preventing white spots on the second side of duplex copies in low humidity environments. Your office stated that the registration assembly (mechanical) was altered to accommodate the addition of the PACT. Registration assembly was done by installing a new circuit board and wire harness in the main frame. A paper supply cover and a document positioner hopper were created to guide and capture originals.

Issue:

Whether the conversion of a Kodak "Model A" copier to a Kodak "Model D" copier constitutes a repair or alteration within the meaning of subheading 9802.00.50, HTSUS, thereby qualifying the returned Model D copier for the duty exemption under this tariff provision.

Law and Analysis:

Subheading 9802.00.50, HTSUS, provides a complete or partial duty exemption for articles returned to the U.S. after having been exported to be advanced in value or improved in condition by means of repairs or alterations. Articles returned to the U.S. after having been repaired or altered in Mexico, whether or not pursuant to warranty, are eligible for duty-free treatment, provided the documentation requirements of section 181.64, Customs Regulations (19 CFR § 181.64), are satisfied. In particular, the documentation required includes a declaration from the person who performed the repairs or alterations, describing the operations performed and the value and cost of such operations, and including a statement that "no substitution whatever had been made to replace any of the goods originally received."

Entitlement to the benefits of subheading 9802.00.50, HTSUS, are precluded in circumstances where the operations performed abroad destroy the identity of the articles or create new or commercially different articles. See *A.F. Burstrom v. United States*, 44 CCPA 27, C.A.D. 631 (1956); *Guardian Industries Corp. v. United States*, 3 CIT 9 (1982). Tariff treatment under subheading 9802.00.50, HTSUS, is also precluded where the exported articles are incomplete for their intended use prior to the foreign processing. *Guardian*;

Dolliff & Company, Inc. v. United States, 81 Cust. Ct. 1, C.D. 4755, 455 F. Supp. 618 (1978), *aff'd*, 66 CCPA 88, C.A.D. 1225, 82, 599 F.2d 1015, 1019 (1979).

In *Press Wireless v. United States*, 6 Cust. Ct. 102, C.D. 438 (1941), the Customs Court held that repairs are operations necessary to restore articles to their original condition, but cannot be so extensive as to destroy the identity of the exported article or create a new or different article. (See also 19 CFR § 181.64, which defines “repairs or alterations” as the restoration, addition, renovation, redyeing, cleaning, resterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the U.S.).

In previous rulings, we have held that subheading 9802.00.50, HTSUS, will be applicable to articles subject to both partial and complete disassembly, where repairs are made and parts are replaced as long as the essential components and therefore the identity of the article remain intact throughout the repair process. For example, in HRL 554731, dated February 2, 1989, Customs considered fuel injectors which involved the replacement of parts and cleaning after disassembly. Customs determined that the fuel injectors qualified for subheading 9802.00.50, HTSUS, treatment, as long as the adapter and retainer of the fuel injector were not replaced and remained together as a matched set, as these constituted the essential identity of the fuel injector.

In HRL 558858/558859, dated March 11, 1996, Customs considered seven models of used copier “hulks” which were repaired, upgraded, and/or modified in Mexico. In each case, the frame of the “hulk” remained intact, and components such as the wiring harnesses, optics assemblies, printed circuit boards, and other electronic subassemblies remained assembled to the hulk at all times. The operations performed in Mexico involved removing the covers, feeder assembly, fuser, developer houser, xerographic motor, control panel, bypass, platen glass, coroton, copy cartridge, and bypass tray assembly. The covers were sanded and painted, and the platen glass and other non-repairable parts were scrapped. Next, the fuser, developer houser and bypass were sent to subassembly stations for repair. The partially torn-down hulk was then sent to an assembly and repair area where the enabler, low and high voltage power supplies, power cord, main printed wiring board assemblies (pwba) paper size pwba, feeder motor, copy cartridge, counter solenoid, counter, balance spring, half rate cartridge, and front/rear rail were removed, repaired, and reassembled along with the previously removed parts.

During the period of 1992–1993, in HRL 558858/558859, the frames, optics, wiring harnesses, optical control boards, optical drive motor, noise filter, fans, blower, discharge lamp, lower cover base, paper feeder motor, ac driver and sensor pwbas, and the low and high voltage power supplies were removed from the hulk frame during the repair assembly process. However, such parts were identified by bar code, and new parts were either used if required, or the used repaired parts were returned to the same model number. It was found in that case that the essential components of the copiers remained intact throughout the repair process, and did not lose their identity as result of the Mexican operations.

In HRL 558858/558859, the EPROMS contained in the copier’s control panel were replaced or reprogrammed so that the copier could perform upgraded tasks, such as operating a noise reduction package or an automatic stapler. In regard to the replacement or reprogramming of EPROMS, which upgraded the copiers to conform to current industry standard, Customs determined that this did not change the identity of the exported articles, but rather improved the product and advanced its value. Accordingly, Customs found in that case that the copiers qualified for subheading 9802.00.50, HTSUS, treatment.

We note that in HRL 558858/558859, Customs stated that subheading 9802.00.50, HTSUS, is applicable to articles subject to both partial and complete disassembly, where parts are replaced, as long as the essential components and therefore the identity of the article remains intact throughout the repair operation. As determined in HRL 558858/558859, the copiers were found not to have lost their identity as a result of the foreign operations. We note that in HRL 555819, dated October 11, 1991, it was stated that the replacement and/or addition of parts to restore products to their original condition may constitute repair operations for purposes of subheading 9802.00.50, HTSUS, if the particular article does not lose its identity and the replacements and/or additions are not so extensive as to create a new or different article. In HRL 555117, dated December 22, 1988, the essential components were also required to be tagged as a matched set.

On the issue of enhanced copier quality, we note that the Court in *Royal Bead Novelty Co., Inc. v. United States*, 68 Cust. Ct. 154, C.D. 4353 (1972) and Customs in HRL 559648 dated May 20, 1996, concluded that a change in the quality of an article resulting from further processing does not preclude application of 9802.00.50. See also HRL 557024, dated June 30, 1993 (involving the enhancement of stock computers in Canada), HRL 560245, dated April 4, 1997 (installation of Mobile satellite communications tracking system on trucks in Canada).

We note that under Additional Note 5, Chapter 90, HTSUS, copier assemblies are grouped as follows: (a) Imaging assemblies; (b) Optics assemblies; (c) User control assemblies; (d) Image fixing assemblies; (e) Paper handling assemblies; and (f) Combination of the above specified assemblies. In our opinion, the order of the listed assemblies, (a) through (e), reflected in U.S. Note 5, is indicative of their significance to the copier. We note that the major components of a typical high-volume photocopier include the photoconductor, a primary charger, and systems for exposure, toning, transfer, erasing, and cleaning. *McGraw Hill Encyclopedia of Science & Technology*, Vol. 13 (1987). We also note that cartridges and developer, fuser rollers and oil, the photoconductor belt, and cleaning brush are consumables which are replaced approximately every 300,000 copies (except for the cartridges which are replaced about every 10,000 copies). Therefore, for purposes of our determination of eligibility for subheading 9802.00.50, HTSUS, treatment, we have focused upon the effect of the operations performed abroad upon the above copier assemblies.

The drum is the “heart” of the copier and almost every step involved with making a copy takes place around the drum. *Kuaimoku, Photocopier Maintenance and Repair Made Easy (1st Ed. 1994)*. There are eight main steps in the copy process all of which involve the imaging assemblies: (1) charging, (2) exposing, (3) developing, (4) transferring, (5) separating, (6) fusing, (7) cleaning, and (8) erasing. The charging corona unit applies the charge on the drum. The exposing step illuminates the document and projects the image on the drum and involves the platen glass, exposure lamp, reflectors, aperture, and manual exposure control. Also involved in exposure is the projection of the image onto the drum’s surface which involves the mirrors, scanner carriage, solid lens and drums of the optical system. The developer section involves the developer (toner and carrier mix); bucket roller; magnetic roller, bias circuit, toner-carrying screw, and developer section body. The transfer step removes the toner image from the drum and places it onto the copy paper by applying a strong electrical charge from the transfer corona to the back side of the copy paper.

With regard to the Model A to D process in the instant case, Customs found in HRL 560290 that replacing the toner and developer assembly was a significant change to the imaging assemblies, which along with other changes in the paper handling assembly (e.g., paper level indicators), LED erase bar, cleaning housing, and scavenger changed the copier’s essential identity.

It is now Customs view that the essential identity of the copiers was retained when processed in Mexico. The record reflected that Kodak tracked which parts and subassemblies are removed from a given carcass through the use of unique inventory control numbers. With regard to the Model A to D process, the differences between the toner and developer assembly and cleaning/erase assemblies of Model A and Model D resulted in a more efficient presentation of the toner to the latent image.

The processing of the two assemblies which are noted above as the two most important assemblies (i.e. imaging and optical assemblies) in a photocopier are in our view not ones which suffice as altering the essential identity of the copier. Although certain parts of these were replaced, the processing did not destroy the essential identity of the copier. As we noted in HRL 555819, replacement and/or addition of parts that were not so extensive as to create a new or different article constitute repair operations for purposes of subheading 9802.00.50, HTSUS. Also, as mentioned in HRL 558858/558859, subheading 9802.00.50, HTSUS, is applicable to articles subject to partial and/or complete disassembly as long as the essential components and the identity of the article remain intact.

It is now clear that many of the replaced parts are parts that can be serviced in the field, and that they are more akin to what we would consider to be “consumables”, or parts that wear out with time and need to be repaired or replaced to ensure the continued functioning of the photocopier.

Accordingly, with regard to the Model A to D process, it is now our opinion that, although the processing involved extensive reconditioning of numerous parts and replacement of a number of parts resulting in an enhancement of certain copier functions, the

changes were not so extensive as to destroy the essential identity of the exported photocopier or create a new or commercially different article. Furthermore, the fact that many of the parts are identified as being able to be replaced in the field, indicates that the replacement of such parts restore the products to their original condition and, therefore, may be considered "repairs" within the meaning of subheading 9802.00.50, HTSUS.

Holding:

On the basis of the information submitted, it is our opinion that the Mexican operations enumerated above with regard to the conversion of Model A to Model D constitute "repairs or alterations" since they did not destroy the identity of the exported copiers or create new or commercially different articles. Therefore, the imported Model D copiers are eligible for the full duty exemption under subheading 9802.00.50, HTSUS. Consistent with this ruling, HRL 560290, dated May 10, 2000, is hereby revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:SM 562514 TJM
Category: Classification
Tariff No. 9802.00.50

PORT DIRECTOR
U.S. CUSTOMS SERVICE
610 West Ash Street
San Diego CA 92188

Re: Revocation of HRL 559418; treatment to photocopiers; Kodak; essential identity; repair and alteration; 19 USC 1625(c).

DEAR PORT DIRECTOR:

This letter is to inform you that Customs has reconsidered Headquarters Ruling Letter ("HRL") 559418, dated December 12, 1996, addressed to you, concerning the classification and eligibility of photocopiers exported to Mexico from the U.S. and returned for duty exemption provided under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS). After review of these rulings, we have determined that the operations in Mexico performed on certain Kodak copiers ("Model B") resulting in "Model D" qualify as "repairs or alterations" as provided under 9802.00.50, HTSUS. For the reasons that follow, this ruling revokes HRL 559418.

Facts:

In HRL 559418, dated December 12, 1996, the facts indicate that Kodak exported used model B copier-duplicators to Mexico, performed various processes to these copiers, and imported model D copier-duplicators to the U.S. It was claimed that the process performed in Mexico constituted "repairs or alterations" and that the returned articles qualified for duty-free entry under subheading 9802.00.50, HTSUS.

Before describing the processes performed to make a model D from a model B, counsel described the processes performed on a model B resulting in a model C (the subject of Headquarters Ruling Letter (HRL) 559483, dated October 17, 1996, concluding that the conversion from a model B to model C constituted acceptable repair or alterations), as it is stated that there were a number of similarities between the two types of processes. Further, counsel noted that the processes performed in the model B to model C conversion were almost identical to those performed in the refurbishing of the model B which remained a model B.

The model B processes performed when there is no change in model number involve disassembling the copiers, cleaning them, and replacing worn parts. It was also stated that if

there was an engineering enhancement, newer model parts were installed to replace old and outdated ones. The disassembled subassemblies were routed through subassembly work stations with unique identifiers so that the repaired subassemblies could be installed into the same copier during the reconditioning phase. According to counsel, the Mexican plant did not perform optical alignments; therefore, the reassembly process kept subassemblies together which had been mated at the time of original manufacture. The copier underwent a set-up and test process and the cabinetry was reinstalled. It is alleged that the reconditioned model B copier was returned to the U.S. without change to its essential components (the image capture system (lenses and film handling assembly)). Both of the copiers were stated to be referred to as "indirect process electrophotostatic copier," and six Erasable Programmable Read-Only Memory chips ("EPROM") were erased and reprogrammed to accommodate updated operating instructions.

Next, counsel presented the processes performed to convert a model B to a model C. It was stated that none of the operations sped up the photocopier or altered the type or size of paper the copier is able to process. Speed and paper size and type are stated by counsel to be the criteria in the marketplace to determine whether or not a copier has been upgraded. The only features which appeared on the model C which did not appear on the model B were the specific document feeder and the Pressure Assist Corona Transfer (PACT). These two features keep the paper flatter as it works its way through the imaging process but allegedly does not change the copier's function. When the document feeder was installed, it required a modification to the static eliminator harness in the duplex tray and the positioner interlock harness in the cabinetry as the remaining internal space was diminished. As a result, a new wire harness was inserted to make the static eliminator smaller.

Counsel also stated that new circuit boards were substituted whether or not the processes resulted in a change in model number. However, the model C required different circuit boards. The existing EPROM was reprogrammed and the input/output boards were modified by soldering an additional wire which allowed the machine to operate either as a model B or a model C. The EPROMS reprogramming supposedly arose because there were changes to the operator control panel.

Counsel stated that the additional steps taken which resulted in a model D were that that model B toning station was replaced with a new toning station which enhanced the image quality. The paper level indicators were added to the paper supply drawers to help customers determine the amount of paper in each supply drawer without having to stop copier operations. An improved latch was added to the document feeder allowing for smoother operation. There was also a new trade dress in the form of different color stripes (aqua) on the front of the copier.

In addition, counsel stated that there were a few minor steps added to the normal reconditioning process. Holes were added to the mainframe to accommodate new harnesses. There was also the installation of a reprogrammed set of six EPROMS to allow the software to relate to all of the new functions, plus an additional energy saving feature was added to the software.

The chart of the model B to model D process indicated that in regard to the Imaging Assemblies, the film belt and worn components were replaced and a new LED erase bar was installed in the photoreceptor belt and handling assembly; a new toner and developer assembly was installed; worn components were replaced in the charging assemblies; and an upgraded cleaning housing was added and a new scavenger was installed in the cleaning assembly.

On November 27 and December 6, 1996, counsel provided additional explanations of certain operations in response to our request. It is stated that the IQE station slider, plenum assembly build, backup slider assembly, and assembly driver roller were the worn components that were replaced in the photoreceptor belt and handling assembly. The IQE station slider basically allows the developer assembly to be removed from the machine without disassembling the machine. The new model of the plenum assembly build installed into the model D uses hoses and ducts instead of magnets to collect excess toner flakes and developer from the film loop. The backup slider assembly moves the image loop toward the developer roller when actuated. The assembly driver roller starts the movement of the image loop around the film core area, and it is stated that worn out rollers were replaced and the same rollers are used regardless of the resulting finished model.

In regard to the charging assemblies, the information received on December 6, 1996, indicates that the worn components replaced are those which naturally wear out during

normal copier operations, such as the corona wires (provides the charge to the image loop), the primary (gives off the charge), and the grill (takes the charge from the corona wire and discharges it over the loop).

In regard to the toner and developer assembly, it is indicated that the major parts are a toner container, replenisher, developer, and magnet rollers, a gear box, sump casting and drive shaft plus a toner concentration monitor and miscellaneous gears, bearings and hardware. In some instances, it is stated that a scavenger is present. It is stated that the configuration and number of changes depend on the specific finished copier model involved. Also, the function of the toner and developer assembly is to receive toner from a bottle and pass it to the image loop for transfer onto the paper on which the image results.

In regard to the cleaning housing, the information received on December 6, 1996, indicates that its function is to eliminate contamination on the film path, and that its major part is a casting. The model B casting was plastic while the model D casting is aluminum. In regard to the LED erase bar, it is indicated that it erases residual information on the image loop between copies.

In regard to the Optics Assemblies, the chart indicates that the platen glass was replaced, and worn components were replaced in the lens/mirror assembly. The information received on December 6, 1996, indicates that the worn components replaced in the lens/mirror assembly are mechanical ones, such as the timing belts and pulleys which slide the lens assembly on its guides by means of a high precision motor during the imaging process. It is also stated that if a lens/mirror is scratched or broken, the lens or mirror itself will be replaced.

In regard to the User Control Assemblies, the chart indicates that worn components and a new display panel with a new color scheme were replaced in the operator control panel assembly. In regard to the Image Fixing Assemblies, the fuser and pressure roller and worn components were replaced in the fusing assembly.

In regard to the Paper Handling Assemblies, the chart indicates that a new document feeder/positioner assembly was made reusing some components and incorporating a semi-automatic position feature; worn components were replaced and paper level indicators were added in the paper supply assembly; worn components were replaced and a PACT modification was added to the registration assembly; and worn components were replaced in the duplex paper path assembly, transport assemblies, and vacuum system. The information received on December 6 indicates that shafts, roller, wire form, solenoids, and sensors (in the duplex tray) are replaced in the transport assemblies.

In regard to the logic and control unit, the chart indicates that failed components were replaced and the EPROMS were reprogrammed to accommodate the semi-automatic position and paper level indicating features.

As indicated above, the scavenger was replaced in the cleaning assembly with one of a more efficient design. In a letter dated December 21, 1994, counsel explained that the scavenger system is designed to remove any residual toner or carrier left on the image medium. Its purpose is to make clearer copies. At the time the letter was written, it was indicated that due to the design flaws the new scavenger system was not used.

Issue:

Whether the operations performed in Mexico, as described above constitute "repairs or alterations" under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS).

Law and Analysis:

Subheading 9802.00.50, HTSUS, provides a complete or partial duty exemption for articles returned to the U.S. after having been exported to be advanced in value or improved in condition by means of repairs or alterations. Articles returned to the U.S. after having been repaired or altered in Mexico, whether or not pursuant to warranty, are eligible for duty-free treatment, provided the documentation requirements of section 181.64, Customs Regulations (19 CFR § 181.64), are satisfied. In particular, the documentation required includes a declaration from the person who performed the repairs or alterations, describing the operations performed and the value and cost of such operations, and including a statement that "no substitution whatever had been made to replace any of the goods originally received."

Entitlement to the benefits of subheading 9802.00.50, HTSUS, are precluded in circumstances where the operations performed abroad destroy the identity of the articles or create new or commercially different articles. *See A.F. Burstrom v. United States*, 44 CCPA

27, C.A.D. 631 (1956); *Guardian Industries Corp. v. United States*, 3 CIT 9 (1982). Tariff treatment under subheading 9802.00.50, HTSUS, is also precluded where the exported articles are incomplete for their intended use prior to the foreign processing. *Guardian; Dolliff & Company, Inc. v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F. Supp. 618 (1978), *aff'd*, 66 CCPA 88, C.A.D. 1225, 82, 599 F.2d 1015, 1019 (1979).

In *Press Wireless v. United States*, 6 Cust. Ct. 102, C.D. 438 (1941), the Customs Court held that repairs are operations necessary to restore articles to their original condition, but cannot be so extensive as to destroy the identity of the exported article or create a new or different article. (See also 19 CFR § 181.64, which defines “repairs or alterations” as the restoration, addition, renovation, redyeing, cleaning, reesterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the U.S.).

In previous rulings, we have held that subheading 9802.00.50, HTSUS, will be applicable to articles subject to both partial and complete disassembly, where repairs are made and parts are replaced as long as the essential components and therefore the identity of the article remain intact throughout the repair process. For example, in HRL 554731, dated February 2, 1989, Customs considered fuel injectors which involved the replacement of parts and cleaning after disassembly. Customs determined that the fuel injectors qualified for subheading 9802.00.50, HTSUS, treatment, as long as the adapter and retainer of the fuel injector were not replaced and remained together as a matched set, as these constituted the essential identity of the fuel injector.

In HRL 558858/558859, dated March 11, 1996, Customs considered seven models of used copier “hulks” which were repaired, upgraded, and/or modified in Mexico. In each case, the frame of the “hulk” remained intact, and components such as the wiring harnesses, optics assemblies, printed circuit boards, and other electronic subassemblies remained assembled to the hulk at all times. The operations performed in Mexico involved removing the covers, feeder assembly, fuser, developer housing, xerographic motor, control panel, bypass, platen glass, coronator, copy cartridge, and bypass tray assembly. The covers were sanded and painted, and the platen glass and other non-repairable parts were scrapped. Next, the fuser, developer housing and bypass were sent to subassembly stations for repair. The partially torn-down hulk was then sent to an assembly and repair area where the enabler, low and high voltage power supplies, power cord, main printed wiring board assemblies (pwba) paper size pwba, feeder motor, copy cartridge, counter solenoid, counter, balance spring, half rate cartridge, and front/rear rail were removed, repaired, and reassembled along with the previously removed parts.

During the period of 1992–1993, in HRL 558858/558859, the frames, optics, wiring harnesses, optical control boards, optical drive motor, noise filter, fans, blower, discharge lamp, lower cover base, paper feeder motor, ac driver and sensor pwbas, and the low and high voltage power supplies were removed from the hulk frame during the repair assembly process. However, such parts were identified by bar code, and new parts were either used if required, or the used repaired parts were returned to the same model number. It was found in that case that the essential components of the copiers remained intact throughout the repair process, and did not lose their identity as a result of the Mexican operations.

In HRL 558858/558859, the EPROMS contained in the copier’s control panel were replaced or reprogrammed so that the copier could perform upgraded tasks, such as operating a noise reduction package or an automatic stapler. In regard to the replacement or reprogramming of EPROMS, which upgraded the copiers to conform to current industry standard, Customs determined that this did not change the identity of the exported articles, but rather improved the product and advanced its value. Accordingly, Customs found in that case that the copiers qualified for subheading 9802.00.50, HTSUS, treatment.

We note that in HRL 558858/558859, Customs stated that subheading 9802.00.50, HTSUS, is applicable to articles subject to both partial and complete disassembly, where parts are replaced, as long as the essential components and therefore the identity of the article remains intact throughout the repair operation. As determined in HRL 558858/558859, the copiers were found not to have lost their identity as a result of the foreign operations. We note that in HRL 555819, dated October 11, 1991, it was stated that the replacement and/or addition of parts to restore products to their original condition may constitute repair operations for purposes of subheading 9802.00.50, HTSUS, if the particular article does not lose its identity and the replacements and/or additions are not

so extensive as to create a new or different article. In HRL 555117, dated December 22, 1988, the essential components were also required to be tagged as a matched set.

On the issue of enhanced copier quality, we note that the Court in *Royal Bead Novelty Co., Inc. v. United States*, 68 Cust. Ct. 154, C.D. 4353 (1972) and Customs in HRL 559648 dated May 20, 1996, concluded that a change in the quality of an article resulting from further processing does not preclude application of 9802.00.50. See also HRL 557024 dated June 30, 1993 (involving the enhancement of stock computers in Canada), HRL 560245 dated April 4, 1997 (installation of Mobile satellite communications tracking system on trucks in Canada).

We note that under Additional Note 5, Chapter 90, HTSUS, copier assemblies are grouped as follows: (a) Imaging assemblies; (b) Optics assemblies; (c) User control assemblies; (d) Image fixing assemblies; (e) Paper handling assemblies; and (f) Combination of the above specified assemblies. In our opinion, the order of the listed assemblies, (a) through (e), reflected in U.S. Note 5, is indicative of their significance to the copier. We note that the major components of a typical high-volume photocopier include the photoconductor, a primary charger, and systems for exposure, toning, transfer, erasing, and cleaning. *McGraw Hill Encyclopedia of Science & Technology*, Vol. 13 (1987). We also note that cartridges and developer, fuser rollers and oil, the photoconductor belt, and cleaning brush are consumables which are replaced approximately every 300,000 copies (except for the cartridges which are replaced about every 10,000 copies). Therefore, for purposes of our determination of eligibility for subheading 9802.00.50, HTSUS, treatment, we have focused upon the effect of the operations performed abroad upon the above copier assemblies.

The drum is the "heart" of the copier and almost every step involved with making a copy takes place around the drum. *Kuaimoku, Photocopier Maintenance and Repair Made Easy (1st Ed. 1994)*. There are eight main steps in the copy process, all of which involve the imaging assemblies: (1) charging, (2) exposing, (3) developing, (4) transferring, (5) separating, (6) fusing, (7) cleaning, and (8) erasing. The charging corona unit applies the charge on the drum. The exposing step illuminates the document and projects the image on the drum and involves the platen glass, exposure lamp, reflectors, aperture, and manual exposure control. Also involved in exposure is the projection of the image onto the drum's surface which involves the mirrors, scanner carriage, solid lens and drums of the optical system. The developer section involves the developer (toner and carrier mix); bucket roller; magnetic roller; bias circuit, toner-carrying screw, and developer section body. The transfer step removes the toner image from the drum and places it onto the copy paper by applying a strong electrical charge from the transfer corona to the back side of the copy paper.

With regard to the Model B to D process in the instant case, Customs found in HRL 559418 that replacing the toner and developer assembly, installing a new LED erase bar, and adding an upgraded cleaning housing and a new vacuum scavenger in the cleaning assembly were significant changes to the imaging assemblies, which along with other changes in the paper handling assembly (paper level indicators), changed the copier's essential identity.

It is now clearer that many of the replaced worn components are parts that can be serviced in the field, and that they are more akin to what we would consider to be "consumables", or parts that wear out with time and need to be repaired or replaced to ensure the continued functioning of the photocopier.

For instance, in the imaging assemblies, the processing included the replacement of the film belt and worn components. A new LED erase bar was installed in the photoreceptor belt. It is stated that the IQE station slider, plenum assembly build, backup slider assembly, and assembly driver roller were the worn components that were replaced in the photoreceptor belt and handling assembly. The IQE station slider basically allows the developer assembly to be removed from the machine without disassembling the machine. The new model of the plenum assembly build installed into the model D uses hoses and ducts instead of magnets to collect excess toner flakes and developer from the film loop. The backup slider assembly moves the image loop toward the developer roller when actuated. The assembly driver roller starts the movement of the image loop around the film core area, and it is stated that worn out rollers were replaced and the same rollers are used regardless of the resulting finished model.

In regard to the charging assemblies, the information received on December 6, 1996, indicated that the worn components replaced were those that naturally wear out during

normal copier operations, such as the corona wires (provides the charge to the image loop), the primary (gives off the charge), and the grill (takes the charge from the corona wire and discharges it over the loop).

Regarding optics assemblies, the platen glass was replaced and worn components were replaced in the lens/mirror assembly. The worn components include mechanical parts such as timing belts and pulleys which slide the lens assembly on its guides.

This processing of the two assemblies which are noted above as the two most important assemblies in a photocopier are in our view not ones which suffice as altering the essential character of the copier. Although certain parts of these assemblies were replaced, the processing did not destroy the essential identity of the copier. As we noted in HRL 555819, replacement and/or addition of parts that are not so extensive as to create a new or different article constitutes repair operations for purposes of subheading 9802.00.50, HTSUS. Also, as mentioned in HRL 558858/558859, subheading 9802.00.50, HTSUS, is applicable to articles subject to partial and/or complete disassembly as long as the essential components and the identity of the article remain intact.

Accordingly, with regard to the Model B to D process, it is now our opinion that, although the foreign processing involved extensive reconditioning of numerous parts and replacement of a number of parts resulting in an enhancement of certain copier functions, the changes made are not so extensive as to destroy the essential identity of the exported photocopier or create a new or commercially different article. Furthermore, the fact that many of the parts are identified as being able to be replaced in the field, indicates that the replacement of such parts restore the products to their original condition and, therefore, may be considered "repairs" within the meaning of subheading 9802.00.50, HTSUS.

Holding:

On the basis of the information submitted, it is our opinion that the Mexican operations enumerated above with regard to the conversion of Model B to D constitute "repairs or alterations" since they did not destroy the identity of the exported copiers or create new or commercially different articles. Therefore, the imported Model D copiers are eligible for the full duty exemption under subheading 9802.00.50, HTSUS. Consistent with this ruling, HRL 559418, dated December 12, 1996, is hereby revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings.

[ATTACHMENT G]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:SM 562515 TJM
Category: Classification
Tariff No. 9802.00.50

PORT DIRECTOR
U.S. CUSTOMS SERVICE
Los Angeles CA 90731

Re: Revocation of HRL 560006; 9802.00.50 treatment to photocopiers; Kodak; essential identity; repair and alteration; HQ 558858; HQ 558859; HQ 555819; HQ 555117; HQ 557024; HQ 560245.

DEAR PORT DIRECTOR:

This letter is to inform you that Customs has reconsidered Headquarters Ruling Letter ("HRL") 560006, dated March 21, 1997, addressed to you, concerning the classification and eligibility of photocopiers exported to Mexico from the U.S. and returned for duty exemption provided under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS). After review of that ruling, we have determined that the operations in Mexico performed on certain Kodak copiers ("Model C") resulting in "Model D"

qualify as "repairs or alterations" as provided under 9802.00.50, HTSUS. For the reasons that follow, this ruling revokes HRL 560006.

Facts:

In HRL 560006, dated March 21, 1997, the facts indicated that Kodak sent to Mexico certain copiers ("Model C") which were no longer operational for repairs and modifications. When the operations were completed, the copiers were returned to the United States as Model D copiers.

In Mexico, the following operations were stated to be performed:

The process began with evaluating the incoming copier and its subassemblies. The unit was then partially disassembled, and the mainframe, parts and subassemblies proceeded to work stations where they were cleaned, worn parts were replaced or repaired, lubrication was applied, and any necessary testing was completed. All copiers had their cabinetry repainted in Mexico, but parts generally were repaired or replaced only as needed. Kodak stated that in the interest of customer satisfaction and decreased cost, certain parts which may otherwise be replaced during field servicing of the machines, such as belts, bearings, developer loops and image loops, which have limited lives, were also replaced at this time. Pursuant to the flow chart accompanying the submission, the following was performed:

Station 10: Cabinetry was removed and repainted;

Station 20: Major subassemblies were removed, including blowers, chargers, paper supply, and muffler box. These subassemblies are critical to the function of the paper supply and feeders. Minor subassemblies were also removed. Parts were replaced as required. For example, in the charger assembly, components which were replaced included the corona wires and the grill. Worn-out rollers which start the movement of the image loop around the film core area were also replaced.

Station 30: The mainframe underwent required modifications, and cleaning.

Station 35: Wiring and wiring harnesses were removed and replaced as required.

Station 40: At this station, the main drive was reconditioned, and other work was performed relating to illumination, fuser area core, and the optics subassembly.

Station 45: Cabinetry and feeder were installed and a functional test was performed.

Station 120: Feeder and paper run cabinetry were set up, and after certain other finishing steps were performed, the copiers were packed and sent out for distribution.

The modifications performed on the copiers were as follows:

- 1) The toning station (toner and developer assembly) was replaced with a new toning station to provide enhanced image quality. The function of the toning assembly is to receive toner from a bottle and pass it on to the image loop for transfer onto the paper on which the image results. Kodak stated that the key components in the older version were a replenisher housing and motor, station sump casting, two developer rollers with two magnet rollers, two mixing blenders and miscellaneous gears, bearings and hardware. The new version had only one developer roller and one magnet roller. It allowed for a different formulation of the developer because the formulation carrier size was reduced in the new version to a much decreased size. Additionally, in the old version, the magnetic properties were soft and not permanent while they were hard and permanent in the new version. Lastly, the developer roller is 200" from the image loop in the older version and .020" in the new version. Kodak stated that these alterations enhance the image quality;

- 2) Paper level indicators were added to the paper supply drawers which help the customer to determine the amount of paper in each drawer without having to stop the copier while it is running; and

- 3) An improved latch was added to the document feeder allowing for smoother operation; and

- 4) New trade dress was applied.

These modifications required certain wiring alterations, which included holes to the mainframe to accommodate the new wiring harnesses, and the reprogramming of six EPROMS. An additional energy saving feature was also added to the software. Kodak stated that with regard to the Optics Assembly, the platen glass was replaced and the illumination housing was repaired but the optics, lens and mirror assemblies were left intact.

Kodak also advised that the roller mechanism around the film core and portions of the charging system was not routinely replaced unless specific parts were worn. The bodies

were repaired and the plastics replaced. Further, it was stated that the operations that took place in Mexico did not include any sophisticated calibrations, and those components that were not changed, in addition to the optics and related assemblies previously noted, included the Fuser Frame (Image Fixing), Film Core Structure (Imaging) and Document Feeder Frame (Paper Handling).

Upon completion of the repair and modification operations at the various workstations, the parts, subassemblies, and mainframe were moved to a functional checkout work station where the operator reassembled the copier and performed a complete functional test. Next, the copier went to a quality work station to receive a quality performance test. Lastly, the copier was packed and returned to the U.S. for distribution.

Kodak stated that the partially disassembled copier had unique identifiers so that the parts could be reassembled with matched subassemblies after the reconditioning processes were completed. Therefore, the reassembly process kept together subassemblies which had been "mated" at the time of original manufacture, and no commingling with parts of other copiers took place.

Issue:

Whether the operations performed in Mexico, as described above, constitute "repairs or alterations" under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS).

Law and Analysis:

Subheading 9802.00.50, HTSUS, provides a complete or partial duty exemption for articles returned to the U.S. after having been exported to be advanced in value or improved in condition by means of repairs or alterations. Articles returned to the U.S. after having been repaired or altered in Mexico, whether or not pursuant to warranty, are eligible for duty-free treatment, provided the documentation requirements of section 181.64, Customs Regulations (19 CFR § 181.64), are satisfied. In particular, the documentation required includes a declaration from the person who performed the repairs or alterations, describing the operations performed and the value and cost of such operations, and including a statement that "no substitution whatever had been made to replace any of the goods originally received."

Entitlement to the benefits of subheading 9802.00.50, HTSUS, are precluded in circumstances where the operations performed abroad destroy the identity of the articles or create new or commercially different articles. See *A.F. Burstrom v. United States*, 44 CCPA 27, C.A.D. 631 (1956); *Guardian Industries Corp. v. United States*, 3 CIT 9 (1982). Tariff treatment under subheading 9802.00.50, HTSUS, is also precluded where the exported articles are incomplete for their intended use prior to the foreign processing. *Guardian; Dolliff & Company, Inc. v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F. Supp. 618 (1978), *aff'd*, 66 CCPA 88, C.A.D. 1225, 82, 599 F.2d 1015, 1019 (1979).

In *Press Wireless v. United States*, 6 Cust. Ct. 102, C.D. 438 (1941), the Customs Court held that repairs are operations necessary to restore articles to their original condition, but cannot be so extensive as to destroy the identity of the exported article or create a new or different article. (See also 19 CFR § 181.64, which defines "repairs or alterations" as the restoration, addition, renovation, redyeing, cleaning, reesterilizing, or other treatment which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the U.S.).

In previous rulings, we have held that subheading 9802.00.50, HTSUS, will be applicable to articles subject to both partial and complete disassembly, where repairs are made and parts are replaced as long as the essential components and therefore the identity of the article remain intact throughout the repair process. For example, in HRL 554731, dated February 2, 1989, Customs considered fuel injectors which involved the replacement of parts and cleaning after disassembly. Customs determined that the fuel injectors qualified for subheading 9802.00.50, HTSUS, treatment, as long as the adapter and retainer of the fuel injector were not replaced and remained together as a matched set, as these constituted the essential identity of the fuel injector.

In HRL 558858/558859, dated March 11, 1996, Customs considered seven models of used copier "hulks" which were repaired, upgraded, and/or modified in Mexico. In each case, the frame of the "hulk" remained intact, and components such as the wiring harnesses, optics assemblies, printed circuit boards, and other electronic subassemblies remained assembled to the hulk at all times. The operations performed in Mexico involved removing the covers, feeder assembly, fuser, developer houser, xerographic motor, control

panel, bypass, platen glass, coroton, copy cartridge, and bypass tray assembly. The covers were sanded and painted, and the platen glass and other non-repairable parts were scrapped. Next, the fuser, developer houser and bypass were sent to subassembly stations for repair. The partially torn-down hulk was then sent to an assembly and repair area where the enabler, low and high voltage power supplies, power cord, main printed wiring board assemblies (pwba) paper size pwba, feeder motor, copy cartridge, counter solenoid, counter, balance spring, half rate cartridge, and front/rear rail were removed, repaired, and reassembled along with the previously removed parts.

During the period of 1992-1993, in HRL 558858/558859, the frames, optics, wiring harnesses, optical control boards, optical drive motor, noise filter, fans, blower, discharge lamp, lower cover base, paper feeder motor, ac driver and sensor pwbas, and the low and high voltage power supplies were removed from the hulk frame during the repair assembly process. However, such parts were identified by bar code, and new parts were either used if required, or the used repaired parts were returned to the same model number. It was found in that case that the essential components of the copiers remained intact throughout the repair process, and did not lose their identify as result of the Mexican operations.

In HRL 558858/558859, the EPROMS contained in the copier's control panel were replaced or reprogrammed so that the copier could perform upgraded tasks, such as operating a noise reduction package or an automatic stapler. In regard to the replacement or reprogramming of EPROMS, which upgraded the copiers to conform to current industry standard, Customs determined that this did not change the identify of the exported articles, but rather improved the product and advanced its value. Accordingly, Customs found in that case that the copiers qualified for subheading 9802.00.50, HTSUS, treatment.

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On the issue of enhanced copier quality, we note that the Court in *Royal Bead Novelty Co., Inc. v. United States*, 68 Cust. Ct. 154, C.D. 4353 (1972) and Customs in HRL 559648 dated May 20, 1996, concluded that a change in the quality of an article resulting from further processing does not preclude application of 9802.00.50. See also HRL 557024 dated June 30, 1993 (involving the enhancement of stock computers in Canada), HRL 560245 dated April 4, 1997 (installation of Mobile satellite communications tracking system on trucks in Canada).

It was claimed that the heart of an electrophotographic copier is the electrophotographic process used. The various models shared the same photoconductor (film loop), toner and developer concept (dual component), as well as the erase, cleaning, charging, exposure and optics system. Only the transfer and scavenging systems and the development process were modified. Measured against the 50 imaging attributes for these named sub-assemblies identified, it was claimed that the five changes mentioned are minor. The overwhelming majority of these characteristics, if they are handled at all (and only about 50 percent on average of any given copier is subject to repair and alteration) while the copier underwent modification, as claimed, were simply repaired during the refurbishing process. It is stated that the few alterations which were made are minor and did not change the essential nature of the electrophotographic process, paper handling, document handling or user interface systems or indeed even the structure of the original machine. Some of the changes were made at the plant for convenience rather than later at the customer's premises, for example, the upgrades which involved the PACT, the cleaning station assembly, the 15 volt power supply and the replacement of carbon fiber brushes with stainless steel antistatic brushes.

We note that under Additional Note 5, Chapter 90, HTSUS, copier assemblies are grouped as follows: (a) Imaging assemblies; (b) Optics assemblies; (c) User control assem-

bles; (d) Image fixing assemblies; (e) Paper handling assemblies; and (f) Combination of the above specified assemblies. In our opinion, the order of the listed assemblies, (a) through (e), reflected in U.S. Note 5, is indicative of their significance to the copier. We note that the major components of a typical high-volume photocopier include the photoconductor, a primary charger, and systems for exposure, toning, transfer, erasing, and cleaning. *McGraw Hill Encyclopedia of Science & Technology*, Vol. 13 (1987). We also note that cartridges and developer, fuser rollers and oil, the photoconductor belt, and cleaning brush are consumables which are replaced approximately every 300,000 copies (except for the cartridges which are replaced about every 10,000 copies). Therefore, for purposes of our determination of eligibility for subheading 9802.00.50, HTSUS, treatment, we have focused upon the effect of the operations performed abroad upon the above copier assemblies.

The drum is the “heart” of the copier and almost every step involved with making a copy takes place around the drum. *Kuaimoku, Photocopier Maintenance and Repair Made Easy (1st Ed. 1994)*. There are eight main steps in the copy process, all of which involve the imaging assemblies: (1) charging, (2) exposing, (3) developing, (4) transferring, (5) separating, (6) fusing, (7) cleaning, and (8) erasing. The charging corona unit applies the charge on the drum. The exposing step illuminates the document and projects the image on the drum and involves the platen glass, exposure lamp, reflectors, aperture, and manual exposure control. Also involved in exposure is the projection of the image onto the drum’s surface which involves the mirrors, scanner carriage, solid lens and drums of the optical system. The developer section involves the developer (toner and carrier mix); bucket roller; magnetic roller; bias circuit, toner-carrying screw, and developer section body. The transfer step removes the toner image from the drum and places it onto the copy paper by applying a strong electrical charge from the transfer corona to the back side of the copy paper.

With regard to the Model C to D process in the instant case, Customs found in HRL 560006 that installing a new toner and developer assembly, which produces a superior print quality, and a new primary charger, were significant changes to the imaging assemblies, which along with other changes in the paper handling assembly (paper level indicators), changed the copier’s essential identity.

It is now Customs view that the essential identity of the copiers was retained when processed in Mexico and partially disassembled. The review of the facts of the case indicate that among the major features which remained attached to the copier at all times were the mechanical frame, casters and wheel systems, film core, drive train, wire harnesses, noise filters, and logic and control units. Various minor features remained attached as well. It was stated that Kodak tracked which parts and subassemblies were removed from a given carcass through the use of unique inventory control numbers. As a result, parts could be reassembled with matched subassemblies after the reconditioning process.

With regard to the Model C to D process, the difference between the toner and developer assembly of the Model C and Model D, resulted in a more efficient presentation of the toner to the latent image. It is clear that many of the replaced parts were parts that can be serviced in the field, and that they are more akin to what we would consider to be “consumables”, or parts that wear out with time and need to be repaired or replaced to ensure the continued functioning of the photocopier.

The processing involving the charger, developer and optics assembly in the instant case was one in which many of the parts were replaced due to normal wear. For instance the worn-out rollers in the charger assembly was replaced. Counsel noted that the roller mechanism around the film core and portions of the charging system were not routinely replaced unless specific parts were worn. In the optics assembly, the platen glass was replaced and the illumination housing was repaired. However, the optics, lens, and mirror assemblies were left intact. Fuser Frame (Imaging Fixing), Film Core Structure (Imaging) and Document Feeder Frame (Paper Handling) were not changed.

A change that did occur was the toning assembly where the key components in the older version—replenisher housing and motor, station sump casting, two developer rollers with two magnet rollers, two mixing blenders along with miscellaneous gears, bearings, and hardware were replaced with a new version having one developer roller and one magnet roller.

This processing of the two assemblies which are noted above as the two most important assemblies in a photocopier are in our view not ones which suffice as altering the essential character of the copier. Although certain parts of these assemblies were replaced, the proc-

essing did not destroy the essential character of the copier. As we noted in HRL 555819, replacement and/or addition of parts that are not so extensive as to create a new or different article constitutes acceptable repair operations for purposes of subheading 9802.00.50, HTSUS. Also, as mentioned in HRL 558858/558859, subheading 9802.00.50, HTSUS, is applicable to articles subject to partial and/or complete disassembly as long as the essential components and the identity of the article remain intact.

Accordingly, with regard to the Model C to D process, it is now our opinion that, although the processing involved extensive reconditioning of numerous parts and replacement of a number of parts resulting in an enhancement of certain copier functions, the changes were not so extensive as to destroy the essential identity of the exported photocopier or create a new or commercially different article. Furthermore, the fact that many of the parts are identified as being able to be replaced in the field, indicates that the replacement of such parts restore the products to their original condition and, therefore, may be considered "repairs" within the meaning of subheading 9802.00.50, HTSUS.

Holding:

On the basis of the information submitted, it is our opinion that the Mexican operations enumerated above with regard to the Model C to D conversion operations constitute "repairs or alterations" since they did not destroy the identity of the exported copiers or create new or commercially different articles. Therefore, the imported Model D copiers which were exported as Model C copiers are eligible for the full duty exemption under subheading 9802.00.50, HTSUS. Consistent with this ruling, HRL 560006, dated March 21, 1997, is hereby revoked.

MYLES B. HARMON,
Acting Director,
Commercial Rulings.

[ATTACHMENT H]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:SM 562516 TJM
Category: Classification
Tariff No.: 9802.00.50

PORT DIRECTOR
U.S. CUSTOMS SERVICE
610 West Ash Street
San Diego CA 92188

Re: Revocation of HRL 559672; 9802.00.50 treatment to photocopiers; Kodak; essential identity; repair and alteration; 19 USC 1625(c).

DEAR PORT DIRECTOR:

This letter is to inform you that Customs has reconsidered Headquarters Ruling Letter ("HRL") 559672, dated December 17, 1996, addressed to you, concerning the classification and eligibility of photocopiers exported to Mexico from the U.S. and returned for duty exemption provided under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS). After review of this ruling, we have determined that the operations in Mexico performed on certain Kodak copiers ("Model F") resulting in "Model D" qualify as "repairs or alterations" as provided under 9802.00.50, HTSUS. For the reasons that follow, this ruling revokes HRL 559672.

Facts:

In Headquarters Ruling Letter ("HRL") 559672, dated December 17, 1996, the facts indicate that Kodak exported used model F copier-duplicators to Mexico, performed various processes to these copiers, and imported model D copier-duplicators to the U.S. It is claimed that the processes performed in Mexico were "repairs or alterations" and that the

returned articles qualified for duty-free entry under subheading 9802.00.50, HTSUS. Before describing the processes performed to make a model F into a model D, counsel stated that the processes performed were similar to those performed in converting a model B to a model D, which in turn are similar to the processes performed on a model B when it became a model C, and which involve those operations performed to the model B when it remained a model B.

The model B processes performed when there was no change in model number involved disassembling the copiers, cleaning them, and replacing worn parts. It was also stated that if there was an engineering enhancement, newer model parts were installed to replace old and outdated ones. The disassembled subassemblies were routed through subassembly work stations with unique identifiers so that the repaired subassemblies could be installed into the same copier during the reconditioning phase. According to counsel, the Mexican plant did not perform optical alignments; therefore, the reassembly process kept subassemblies together which had been mated at the time of original manufacture. The copier underwent a set-up and test process and the cabinetry was reinstalled. It was alleged that the reconditioned model B copier was returned to the U.S. without change to its essential components (the image capture system (lenses and film handling assembly)). Both of the copiers were stated to be referred to as "indirect process electrophotostatic copiers," and six Erasable Programmable Read-Only Memory chips ("EPROMS") were erased and reprogrammed to accommodate updated operating instructions.

Next, counsel presented the processes performed to convert a model B to a model C. It was stated that none of the operations sped up the photocopier or altered the type or size of paper the copier is able to process. Speed and paper size and type were stated by protestant to be the criteria in the marketplace to determine whether or not a copier has been upgraded. The only features which appeared on the model C which did not appear on the model B were the specific document feeder and the Pressure Assist Corona Transfer (PACT). The document feeder incorporated a semi-automatic positioning feature. The PACT modification kept the paper flatter as it works its way through the imaging process but allegedly did not change the copier's function. When the document feeder was installed, it required a modification to the static eliminator harness in the duplex tray and the positioner interlock harness in the cabinetry as the remaining internal space was diminished. As a result, a new wire harness was inserted to make the static eliminator smaller.

Counsel also stated that new circuit boards were substituted whether or not the processes resulted in a change in model number. However, model C required different circuit boards. The existing EPROMS as reprogrammed and the input/output boards were modified by soldering an additional wire which allowed the machine to operate either as a model B or a model C. The EPROMS reprogramming supposedly arose to accommodate the new document feeder.

Counsel stated that the additional steps taken which resulted in a model D from a model F were that the model F toning station was replaced with a new toning station which enhanced the image quality. The paper level indicators were added to the paper supply drawers to help customers determine the amount of paper in each supply drawer without having to stop copier operations. An upgraded trimodal document feeder was installed including an improved latch to allow for smoother operation. There was also a new trade dress.

In addition, counsel stated that there were a few minor steps added to the normal reconditioning process. Holes were added to the mainframe to accommodate new harnesses. There was also the installation of a reprogrammed set of six EPROMS to allow the software to relate to all of the new functions, plus an additional energy saving feature was added to the software. The principle differences stated by counsel between the model F to model D process (the subject of this request), and the model B to model D process was that the paper supply was modified to allow for automatic duplexing which resulted in the addition, as well, of a duplex tray and the inclusion of duplex paper path assemblies; the copier speed was enhanced from 70 to 85 copies per minute by the replacement of three sprockets and a chain; and a noise reduction was achieved through the addition of a muffler in the vacuum system and a damper from the paper stop gate.

In addition, counsel stated that some additional steps occurred during conversion of model F to model D. The registration assembly was altered to accommodate the addition of the PACT. Four new subassemblies were added to the new model configuration: document positioner hopper, paper supply cover, wireform and duplex tray. In the Logic and Control

Unit, the EPROMS were erased and reprogrammed with the latest version of software, including an energy saving feature that puts the copier in stand-by mode. A 5-Volt regulator was also added for the stepper control circuitry. The developer station was replaced with a new high definition grain station which allows for superior image quality.

The Scuff bimodal document feeder was replaced with a new trimodal document feeder that incorporated a semi-automatic positioner. The copier main harness was replaced in order to accommodate the model D features. Components, such as the main drive motor sprocket, clutch and developer drive sprocket assembly were replaced to speed up the copier's performance. The vacuum system was also modified to incorporate the ability to automatically duplex, accommodate heavier paper sizes, and reduce noise levels through the addition of a muffler.

The chart of the model F to model D process indicated that in regard to the Imaging Assemblies, the film belt and worn components were replaced, and a new LED erase bar was installed in the photoreceptor belt and handling assembly; a new toner and developer assembly was installed; worn components were replaced in the charging assemblies; and an upgraded cleaning housing was added and a new scavenger was installed in the cleaning assembly.

On November 27 and December 6, 1996, counsel provided additional explanations of certain operations in response to our request. It was stated that the IQE station slider, plenum assembly build, backup slider assembly, and assembly drive roller were the worn components that were replaced in the photoreceptor belt and handling assembly. The IQE station slider basically allows the developer assembly to be removed from the machine without disassembling the machine. The new model of the plenum assembly build installed into model D photocopiers used hoses and ducts instead of magnets to collect excess toner flakes and developer from the film loop. The backup slider assembly moves the image loop toward the developer roller when actuated. The assembly drive roller starts the movement of the image loop around the film core area, and it was stated that worn out rollers were replaced and the same rollers were used regardless of the resulting finished model.

In regard to the charging assemblies, the information received on December 6, 1996, indicated that the worn components replaced were those which naturally wear out during normal copier operations, such as the corona wires (provides the charge to the image loop), the primary (gives off the charge), and the grill (takes the charge from the corona wire and disburses it over the loop).

In regard to the toner and developer assembly, it was indicated that the major parts were a toner container, replenisher, developer, and magnet rollers, a gear box, sump casting and drive shaft plus a toner concentration monitor and miscellaneous gears, bearings and hardware. In some instances, it was stated that a scavenger is present. It was stated that the configuration and number of changes depended on the specific finished copier model involved and that the function of the toner and developer assembly was to receive toner from a bottle and pass it to the image loop for transfer onto the paper on which the image results.

In regard to the cleaning housing, the information received on December 6, 1996, indicated that its function is to eliminate contamination on the film path, and that its major part is a casting. The model F casting was plastic, while the model D casting is aluminum. In regard to the LED erase bar, it was indicated that it erases residual information on the image loop between copies.

In regard to the Optics Assemblies, the chart indicated that the platen glass was replaced and a new platen frame was installed in the platen glass and illumination housing; and worn components were replaced in the lens/mirror assembly. The information received on December 6, 1996, indicated that the worn components replaced in the lens/mirror assembly were mechanical ones, such as the timing belts and pulleys which slide the lens assembly on its guides by means of a high precision motor during the imaging process. It was also stated that if a lens/mirror was scratched or broken, the lens or mirror itself was replaced.

In regard to the User Control Assemblies, the chart indicated that worn components and a new display panel with a new color scheme were replaced in the operator control panel assembly. In regard to the Image Fixing Assemblies, the fuser and pressure roller and worn components were replaced in the fusing assembly.

In regard to the Paper Handling Assemblies, the chart indicated that a new document feeder/positioner assembly was made reusing some components, which incorporated an

automatic duplexing and semi-automatic positioning feature; a new paper supply assembly was made reusing some components and an improved feeding system and paper level indicators were installed; worn components, PACT modification, and a multifeed detection was added to the registration assembly; a new duplex paper path assembly was added; worn components and the vacuum and upper transports were replaced in the transport assemblies; worn components were replaced in the vacuum system, and heavy duty blowers were converted to handle heavy weight paper, valves were replaced for automatic duplexing, and a muffler was installed to reduce noise. The information received December 6 indicated that shafts, rollers, wire forms, solenoids, and sensors (in the duplex tray) were replaced in the transport assemblies.

In regard to the logic and control unit, the chart indicated that the EPROMS were reprogrammed; the control unit was modified; and a stepper control was added to accommodate automatic duplexing. Additionally, change occurred to the color scheme, the top cover was modified, and a tray assembly and side hopper were installed to accommodate the positioner. Pulleys and sprockets were replaced to speed up the unit from 70 to 85 copies per minute.

As indicated above, the scavenger was replaced in the cleaning assembly with one of a more efficient design. In a letter dated December 21, 1994, counsel explained that the scavenger system is designed to remove any residual toner or carrier left on the image medium. Its purpose is to make clearer copies. At the time the letter was written, it was indicated that due to design flaws the new scavenger system was not used.

Since counsel noted that the processes in making a model D were similar to those in making a model C, your office's concerns over the model B to model C processes are noted. Your office stated that the model B did not possess the necessary mechanical hardware, circuitry, document positioner, tri-modal feeder, auto-sizing capabilities, PACT and programming required for the model C to exist. Your office stated that the model B was known as a copier-duplicator, while the model C was known as an offset copier-duplicator. The model C's tri-modal feeder takes normal paper weights and sizes automatically through the recirculating feeder, or it copies odd size and weight originals through the semi-automatic positioner, or it allows for manual copying. The auto-sizing capabilities reduce the image size of the original to fit the selected paper supply, and it is capable of offset stacking.

Issue:

Whether the conversion of Kodak "Model F" copiers to a Kodak "Model D" copiers constituted "repairs or alteration" under subheading 9802.00.50, Harmonized Tariff Schedule of the United States (HTSUS).

Law and Analysis:

Subheading 9802.00.50, HTSUS, provides a complete or partial duty exemption for articles returned to the U.S. after having been exported to be advanced in value or improved in condition by means of repairs or alterations. Articles returned to the U.S. after having been repaired or altered in Mexico, whether or not pursuant to warranty, are eligible for duty-free treatment, provided the documentation requirements of section 181.64, Customs Regulations (19 CFR § 181.64), are satisfied. In particular, the documentation required includes a declaration from the person who performed the repairs or alterations, describing the operations performed and the value and cost of such operations, and including a statement that "no substitution whatever had been made to replace any of the goods originally received."

Entitlement to the benefits of subheading 9802.00.50, HTSUS, are precluded in circumstances where the operations performed abroad destroy the identity of the articles or create new or commercially different articles. See *A.F. Burstrom v. United States*, 44 CCPA 27, C.A.D. 631 (1956); *Guardian Industries Corp. v. United States*, 3 CIT 9 (1982). Tariff treatment under subheading 9802.00.50, HTSUS, is also precluded where the exported articles are incomplete for their intended use prior to the foreign processing. *Guardian; Dolliff & Company, Inc. v. United States*, 81 Cust. Ct. 1, C.D. 4755, 455 F. Supp. 618 (1978), *aff'd*, 66 CCPA 88, C.A.D. 1225, 82, 599 F.2d 1015, 1019 (1979).

In *Press Wireless v. United States*, 6 Cust. Ct. 102, C.D. 438 (1941), the Customs Court held that repairs are operations necessary to restore articles to their original condition, but cannot be so extensive as to destroy the identity of the exported article or create a new or different article. (See also 19 CFR § 181.64, which defines "repairs or alterations" as the restoration, addition, renovation, redeyeing, cleaning, reesterilizing, or other treatment

which does not destroy the essential characteristics of, or create a new or commercially different good from, the good exported from the U.S.).

In previous rulings, we have held that subheading 9802.00.50, HTSUS, will be applicable to articles subject to both partial and complete disassembly, where repairs are made and parts are replaced as long as the essential components and therefore the identity of the article remain intact throughout the repair process. For example, in HRL 554731, dated February 2, 1989, Customs considered fuel injectors which involved the replacement of parts and cleaning after disassembly. Customs determined that the fuel injectors qualified for subheading 9802.00.50, HTSUS, treatment, as long as the adapter and retainer of the fuel injector were not replaced and remained together as a matched set, as these constituted the essential identity of the fuel injector.

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In HRL 558858/558859, the EPROMS contained in the copier's control panel were replaced or reprogrammed so that the copier could perform upgraded tasks, such as operating a noise reduction package or an automatic stapler. In regard to the replacement or reprogramming of EPROMS, which upgraded the copiers to conform to current industry standard, Customs determined that this did not change the identity of the exported articles, but rather improved the product and advanced its value. Accordingly, Customs found in that case that the copiers qualified for subheading 9802.00.50, HTSUS, treatment.

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On the issue of enhanced copier quality, we note that the Court in *Royal Bead Novelty Co., Inc. v. United States*, 68 Cust. Ct. 154, C.D. 4353 (1972) and Customs in HRL 559648 dated May 20, 1996, concluded that a change in the quality of an article resulting from further processing does not preclude application of 9802.00.50. See also HRL 557024

dated June 30, 1993 (involving the enhancement of stock computers in Canada), HRL 560245 dated April 4, 1997 (installation of Mobile satellite communications tracking system on trucks in Canada).

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The drum is the "heart" of the copier and almost every step involved with making a copy takes place around the drum. *Kuaimoku, Photocopier Maintenance and Repair Made Easy (1st Ed. 1994)*. There are eight main steps in the copy process: (1) charging, (2) exposing, (3) developing, (4) transferring, (5) separating, (6) fusing, (7) cleaning, and (8) erasing. The charging corona unit applies the charge on the drum. The exposing step illuminates the document and projects the image on the drum and involves the platen glass, exposure lamp, reflectors, aperture, and manual exposure control. Also involved in exposure is the projection of the image onto the drum's surface which involves the mirrors, scanner carriage, solid lens and drums of the optical system. The developer section involves the developer (toner and carrier mix); bucket roller; magnetic roller, bias circuit, toner-carrying screw, and developer section body. The transfer step removes the toner image from the drum and places it onto the copy paper by applying a strong electrical charge from the transfer corona to the back side of the copy paper.

With regard to the Model F to D process in the instant case, Customs ruled in HRL 559672 that replacing the toner and developer assembly, installing a new LED erase bar, and adding an upgraded cleaning housing and a new vacuum scavenger in the cleaning assembly were significant changes to the imaging assemblies, which along with other changes in the paper handling assembly (paper level indicators), changed the copier's essential identity.

With regard to the Model F to D process, the difference between the toner and developer assembly and cleaning/erase assemblies of the Model F and Model D, as well as the changes to the bias voltage, magnetic roller, LED erase bar, and vacuum scavenger, result in a more efficient presentation of the toner to the latent image.

For instance, in the imaging assemblies, the processing included the replacement of the film belt and worn components. A new LED erase bar was installed in the photoreceptor belt. It is stated that the IQE station slider, plenum assembly build, backup slider assembly, and assembly driver roller were the worn components that were replaced in the photoreceptor belt and handling assembly. The IQE station slider basically allows the developer assembly to be removed from the machine without disassembling the machine. The new model of the plenum assembly build installed into the model D uses hoses and ducts instead of magnets to collect excess toner flakes and developer from the film loop. The backup slider assembly moves the image loop toward the developer roller when actuated. The assembly driver roller starts the movement of the image loop around the film core area, and it is stated that worn out rollers were replaced and the same rollers are used regardless of the resulting finished model.

In regard to the charging assemblies, the information received on December 6, 1996, indicated that the worn components replaced were those that naturally wear out during normal copier operations, such as the corona wires (provides the charge to the image loop), the primary (gives off the charge), and the grill (takes the charge from the corona wire and discharges it over the loop).

Regarding optics assemblies, the platen glass was replaced and worn components were replaced in the lens/mirror assembly. The worn components include mechanical parts such as timing belts and pulleys which slide the lens assembly on its guides.

This processing of the two assemblies which are noted above as the two most important assemblies in a photocopier are in our view not ones which suffice as altering the essential identity of the copier. Although certain parts of these assemblies are replaced, the processing does not destroy the essential identity of the copier. As we noted in HRL 555819, replacement and/or addition of parts that are not so extensive as to create a new or different article constitutes repair operations for purposes of subheading 9802.00.50, HTSUS. Also, as mentioned in HRL 558858/558859, subheading 9802.00.50, HTSUS, is applicable to articles subject to partial and/or complete disassembly as long as the essential components and the identity of the article remain intact.

Accordingly, with regard to the Model F to D process, it is now our opinion that, although the processing involved extensive reconditioning of numerous parts and replacement of a number of parts resulting in an enhancement of certain copier functions, the changes were not so extensive as to destroy the essential identity of the exported photocopier or create a new or commercially different article. Furthermore, the fact that many of the parts are identified as being able to be replaced in the field, indicates that the replacement of such parts restore the products to their original condition and, therefore, may be considered "repairs" within the meaning of subheading 9802.00.50, HTSUS. The partial disassembly, also consistent with HRL 558858/558859 does not disqualify the application of 9802.00.50, HTSUS, to the instant case.

Holding:

On the basis of the information submitted, it is our opinion that the Mexican operations enumerated above with regard to the conversion of Model F to D constitute "repairs or alterations" since they did not destroy the identity of the exported copiers or create new or commercially different articles. Therefore, the imported Model D copiers are eligible for the full duty exemption under subheading 9802.00.50, HTSUS. Consistent with this ruling, HRL 559672, dated December 16, 1996, is hereby revoked.

MYLES B. HARMON,
 Acting Director,
 Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND
TREATMENT RELATING TO TARIFF CLASSIFICATION OF
SMOKELESS INHALERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of smokeless inhalers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (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 is proposing to revoke two ruling letters pertaining to the tariff classification of smokeless inhalers under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs is proposing to revoke any treatment previously accorded by Customs to substantially identical transactions. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before January 3, 2003.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Deborah Stern, General Classification Branch (202) 572-8785.

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 Customs 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 Customs 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 Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke two ruling letters pertaining to the tariff classification of smokeless inhalers. Although in this notice Customs is specifically referring to two rulings (NY 875303 and NY 874119), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the two identified. No additional 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 Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the

importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or to the importer's or Customs' previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs 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 the proposed action.

In NY 875303, dated June 17, 1992 (Attachment A), and in NY 874119, dated May 21, 1992 (Attachment B), two types of smokeless inhalers were classified as medicaments under subheading 3004.90.60, HTSUS. It is now Customs position that these smokeless inhalers are classifiable as other chemical preparations not elsewhere specified or included in subheading 3824.90.91, HTSUS.

"Medicaments" of heading 3004, HTSUS, are medicinal preparations for use in the internal or external treatment or prevention of human or animal ailments (i.e. therapeutic or prophylactic uses). Although nicotine dependency is a medical ailment for purposes of heading 3004, HTSUS, *see* HQ 961666, dated April 14, 1998 (classifying a nicotine transdermal delivery system in heading 3004, HTSUS), the subject smokeless inhalers do not contain medicinal preparations used to treat or prevent nicotine dependency. Therefore, they are outside the scope of the heading.

As the smokeless inhalers consist of a plastic article, cotton and a flavor mixture, they are composite goods, classifiable by their essential character according to GRI 3(b). The flavor mixture imparts the essential character of the inhaler, as it comprises the inhaled component. Accordingly, they are classifiable in subheading 3824.90.91, HTSUS.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY 875303, NY 874119, and any other ruling not specifically identified, to reflect the proper classification of the subject merchandise or substantially similar merchandise, pursuant to the analysis set forth in HQ 966027 (Attachment C) and HQ 966028 (Attachment D), respectively. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action, we will give consideration to any written comments timely received.

Dated: November 15, 2002.

GAIL A. HAMILL,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, June 17, 1992.
CLA-2-30:S:N:N1-F:238 875303
Category: Classification
Tariff No. 3004.90.6090

MR. DORON DEKEL
*8447 De Soto Avenue, #5
Canoga Park, CA 91304*

Re: The tariff classification of "Flowers Menthol", a smokeless-cigarette substitute, from Spain.

DEAR MR. DEKEL:

In your letter dated June 7, 1992, you requested a tariff classification ruling.

"Flowers Menthol" are smokeless, substitute cigarettes, constructed from plastic and cotton, which utilize menthol crystals as a mild flavoring agent.

These "cigarettes", which are never lit, are used as a deterrent to smoking by helping to curb the urge to smoke regular cigarettes. One would simply substitute a "Flowers Menthol" "cigarette" for a regular cigarette when the urge to smoke arises. Each substitute cigarette is individually packaged in a blister pack.

The applicable subheading for this product will be 3004.90.6090, Harmonized Tariff Schedule of the United States (HTS), 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. The rate of duty will be 6.3 percent ad valorem.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, MD 20857, telephone number (202) 443-3380.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
*Area Director,
New York Seaport.*

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, May 21, 1992.
CLA-2-30:S:N:N1-F:238 874119
Category: Classification
Tariff No. 3004.90.6090

MR. TIM KROUSE
TRADE PARTNERS INTERNATIONAL
*2610 S.W. Buckingham Avenue
Portland, OR 97201*

Re: The tariff classification of "Paipo", an alternative to cigarette smoking, from Japan.

DEAR MR. KROUSE:

In your letter dated April 15, 1992, received on May 5, 1992, you requested a tariff classification ruling.

The submitted sample, "Paipo", is a non-smoking, disposable, flavored cigarette substitute, whose flavor is claimed to last more than 24 hours. It resembles a cigarette in appear-

ance and is available in eight flavors (e.g., fruit, lemon-lime, etc.). Among the listed ingredients are various natural essential oils and flavoring agents. "Paipos" are put up in a blister pack, each of which contains 3 "cigarettes", and packaged in a small box for retail sale.

The applicable subheading for this product will be 3004.90.6090, Harmonized Tariff Schedule of the United States (HTS), 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 6.3 percent ad valorem.

This merchandise may be subject to the regulations of the Food and Drug Administration. You may contact them at 5600 Fishers Lane, Rockville, Maryland 20857, telephone number (202) 443-3380.

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

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2: RR:CR:GC 966027 DBS
Category: Classification
Tariff No. 3824.90.91

MR. DORON DEKEL
8447 De Soto Ave., #5
Canoga Park, CA 91304

Re: Smokeless inhaler; NY 875303 revoked.

DEAR MR. DEKEL:

On June 17, 1992, the Customs National Commodity Specialist Division, New York, issued to you NY Ruling Letter 875303, which classified "Flowers Menthol," a smokeless inhaler, under the Harmonized Tariff Schedule of the United States (HTSUS), as other medicaments, put up in measured doses or in forms or packings for retail sale, of subheading 3004.90.60, HTSUS (now 3004.90.91, HTSUS). We have reconsidered the classification of this article and now believe NY 875303 is incorrect.

Facts:

The facts as stated in NY 875303 are as follows:

"Flowers Menthol" are smokeless, substitute cigarettes, constructed from plastic and cotton, which utilize menthol crystals as a mild flavoring agent.

These "cigarettes", which are never lit, are used as a deterrent to smoking by helping to curb the urge to smoke regular cigarettes. One would simply substitute a "Flowers Menthol" "cigarette" for a regular cigarette when the urge to smoke arises. Each substitute cigarette is individually packaged in a blister pack.

Issue:

Whether smokeless inhalers are classifiable as medicaments of heading 3004, HTSUS.

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that articles are to be classified by the terms of the head-

ings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note. In the event that 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.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

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 or in forms or packing for retail sale:
3004.90	Other:
3004.90.91	Other
*	* * * * *
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included.
3824.90	Other:
	Other:
3824.90.91	Other

GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note.

In the HTSUS, “medicaments” are medicinal preparations for use in the internal or external treatment or prevention of human or animal ailments (i.e., therapeutic or prophylactic uses). HQ 084102, dated November 24, 1989. “Therapeutic use” has been described by the courts in *Austin Chemical Co. v. United States*, 659 F. Supp. 229 (CIT 1987), *aff’d* by *Austin Chemical Company, Inc. v. United States*, 835 F.2d at 1426 (CAFC 1987). The court first noted that “therapeutic” means “of or relating to the treatment of disease or disorders by remedial agents or methods; CURATIVE, MEDICINAL.” *Id.* at 231 (*citing Webster’s Third New International Dictionary* (1966)). The court stated that the term “therapeutic use” indicates that a substance, by itself, is in a condition ready for use as a curative. *See Austin*, 659 F. Supp. at 231-32.

Nicotine dependency is a medical ailment for purposes of heading 3004, HTSUS. *See* HQ 961666, dated April 14, 1998 (classifying a nicotine transdermal delivery system which aids in breaking the nicotine dependency associated with smoking in heading 3004, HTSUS). However, unlike the nicotine transdermal delivery system, which contains the drug nicotine, the instant smokeless inhalers do not contain medicinal preparations used to treat or prevent nicotine dependency.

Rather, the instant product offers sensory stimuli intended to curb or satiate the smoker’s behavioral desires associated with smoking, such as the oral fixation or the “calming effect” of drawing on a cigarette and inhaling the vapors. An article may be a substitute for another, where it takes the place of the other and has similar characteristics and uses. *See Tai Lung Co. v. United States*, 18 CCPA 35, 37; T.D. 44004. “However, the mere fact * * * that a substance is used in lieu of another does not * * * establish that it is * * * a substitute * * *.” *Rudolph Faehndrich et al. v. United States*, 49 Cust. Ct. 1, 5; C.D. 2351 (1962). The instant article is intended to be used in lieu of smoking, but is neither a “substitute” for tariff purposes (e.g., tobacco substitute of heading 2403, HTSUS), nor a medicament, because it lacks medicinal value. Accordingly, heading 3004, HTSUS, does not cover the instant smokeless inhalers. Thus, NY 875303 is in error.

We now must determine the appropriate classification of this product. “Flowers Menthol” is in part a plastic article, in part cotton, and in part a mixture containing menthol crystals. As no single heading describes the article as a whole, the smokeless inhaler is not classifiable according to GRI 1, but is a composite good according to GRI 3. Therefore, we

must apply GRI 3(b), which provides that composite goods are to be classified according to the component that gives the good its essential character.

EN VIII to GRI 3(b) explains that “[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.” Recent court decisions on the essential character for 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the goods. See *Better Home Plastics Corp. v. U.S.*, 916 F. Supp. 1265 (CIT 1996), *aff’d* 119 F.3d 969 (CAFC 1997); *Mita Copystar America, Inc. v. U.S.*, 966 F.Supp. 1245 (CIT 1997), *rehear’g denied*, 994 F. Supp. 393 (1998); *Vista Int’l Packing Co. v. U.S.*, 890 F. Supp. 1095 (CIT 1995). See also *Pillowtex Corp. v. U.S.*, 893 F. Supp. 188 (CIT 1997), *aff’d* 171 F.3d 1370 (CAFC 1999).

We find the flavor mixture predominates over the plastic and cotton components as it is the inhalant portion of the inhaler that establishes the good’s essential character, providing the appeal and purpose of the product. Therefore, “Flowers Menthol” is classifiable as a chemical preparation not elsewhere specified or included under heading 3824, HTSUS.

Holding:

“Flowers Menthol” smokeless inhalers are classified in subheading 3824.90.91, HTSUS, which provides for, “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; other: other: other: other.”

Effect on Other Rulings:

NY 875303, dated June 17, 1992, is hereby REVOKED.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 966028 DBS
Category: Classification
Tariff No. 3824.90.91

MR. TIM KROUSE
TRADE PARTNERS INTERNATIONAL
2610 S.W. Buckingham Ave.
Portland, OR 97201

Re: Smokeless inhaler; NY 874119 revoked.

DEAR MR. KROUSE:

On May 21, 1992, the Customs National Commodity Specialist Division, New York, issued to you NY Ruling Letter 874119, which classified “Paipo,” a smokeless inhaler, under the Harmonized Tariff Schedule of the United States (HTSUS), as other medicaments, put up in measured doses or in forms or packings for retail sale, of subheading 3004.90.60, HTSUS. We have reconsidered the classification of this article and now believe NY 874119 is incorrect.

Facts:

The facts as stated in NY 874119 is as follows:

The submitted sample, “Paipo,” is a non-smoking, disposable, flavored cigarette substitute, whose flavor is claimed to last more than 24 hours. It resembles a cigarette in appearance and is available in eight flavors (e.g., fruit, lemon-lime, etc.). Among

the listed ingredients are various natural essential oils and flavoring agents. "Paipos" are put up in a blister pack, each of which contains 3 "cigarettes", and packaged in a small box for retail sale.

Issue:

Whether smokeless inhalers are classifiable as medicaments of heading 3004, HTSUS.

Law and Analysis:

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

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (ENs) may be utilized. ENs, though not dispositive or legally binding, provide commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS provisions under consideration are as follows:

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 or in forms or packing for retail sale:
3004.90	Other:
3004.90.91	Other
*	* * * * *
3824	Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included.
3824.90	Other:
	Other:
	Other:
3824.90.91	Other

GRI 1 provides that articles are to be classified by the terms of the headings and relative Section and Chapter Notes. For an article to be classified in a particular heading, the heading must describe the article, and not be excluded therefrom by any legal note.

In the HTSUS, "medicaments" are medicinal preparations for use in the internal or external treatment or prevention of human or animal ailments (i.e., therapeutic or prophylactic uses). HQ 084102, dated November 24, 1989. "Therapeutic use" has been described by the courts in *Austin Chemical Co. v. United States*, 659 F. Supp. 229 (CIT 1987), *aff'd by Austin Chemical Company, Inc. v. United States*, 835 F.2d at 1426 (CAFC 1987). The court first noted that "therapeutic" means "of or relating to the treatment of disease or disorders by remedial agents or methods; CURATIVE, MEDICINAL." *Id.* at 231 (*citing Webster's Third New International Dictionary* (1966)). The court stated that the term "therapeutic use" indicates that a substance, by itself, is in a condition ready for use as a curative. See *Austin*, 659 F. Supp. at 231-32.

Nicotine dependency is a medical ailment for purposes of heading 3004, HTSUS. See HQ 961666, dated April 14, 1998 (classifying a nicotine transdermal delivery system which aids in breaking the nicotine dependency associated with smoking in heading 3004, HTSUS). However, unlike the nicotine transdermal delivery system, which contains the drug nicotine, the instant smokeless inhalers do not contain medicinal preparations used to treat or prevent nicotine dependency.

Rather, the instant product offers sensory stimuli intended to curb or satiate the smoker's behavioral desires associated with smoking, such as the oral fixation or the "calming effect" of drawing on a cigarette and inhaling the vapors. An article may be a substitute for another, where it takes the place of the other and has similar characteristics and uses. See *Tai Lung Co. v. United States*, 18 CCPA 35, 37; T.D. 44004. "However, the mere fact * * * that a substance is used in lieu of another does not * * * establish that it is * * * a substitute * * *." *Rudolph Faehndrich et al. v. United States*, 49 Cust. Ct. 1, 5; C.D. 2351 (1962).

The instant article is intended to be used in lieu of smoking, but is neither a “substitute” for tariff purposes (e.g., tobacco substitute of heading 2403, HTSUS), nor a medicament, because it lacks medicinal value. Accordingly, heading 3004, HTSUS, does not cover the instant smokeless inhalers. Thus, NY 875303 is in error. Accordingly, heading 3004, HTSUS does not cover the instant smokeless inhalers. Thus, NY 875303 is in error.

We now must determine the appropriate classification of this product. “Paipo” is in part a plastic article, in part cotton, and in part a mixture containing natural essential oils and flavoring agents. As no single heading describes the article as a whole, the smokeless inhaler is not classifiable according to GRI 1, but is a composite good according to GRI 3. Therefore, we must apply GRI 3(b), which provides that composite goods are to be classified according to the component that gives the good its essential character.

EN VIII to GRI 3(b) explains that “[t]he factor which determines essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of the constituent material in relation to the use of the goods.” Recent court decisions on the essential character for 3(b) purposes have looked primarily to the role of the constituent material in relation to the use of the goods. See *Better Home Plastics Corp. v. U.S.*, 916 F. Supp. 1265 (CIT 1996), *aff’d* 119 F. 3d 969 (CAFC 1997); *Mita Copystar America, Inc. v. U.S.*, 966 F.Supp. 1245 (CIT 1997), *rehear’g denied*, 994 F. Supp. 393 (1998); *Vista Int’l Packing Co. v. U.S.*, 890 F. Supp. 1095 (CIT 1995). See also *Pillowtex Corp. v. U.S.*, 893 F. Supp. 188 (CIT 1997), *aff’d* 171 F. 3d 1370 (CAFC 1999).

We find the flavor mixture predominates over the plastic and cotton components as it is the inhalant portion of the inhaler, and provides the appeal and purpose of the product. Therefore, “Paipo” is classifiable as a chemical preparation not elsewhere specified or included under heading 3824, HTSUS.

Holding:

“Paipo” smokeless inhalers are classified in subheading 3824.90.91, HTSUS, which provides for, “Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; other: other: other: other.”

Effect on Other Rulings:

NY 874119, dated May 21, 1992, is hereby REVOKED

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT
RELATING TO TARIFF CLASSIFICATION OF GLOVES

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of gloves.

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 is revoking one ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of certain gloves. Similarly, Customs is revoking any treatment previously accorded by it to substantially identical merchandise.

Notice of the proposed actions was published September 4, 2002, in the CUSTOMS BULLETIN, Vol. 36, No. 36. Two comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Timothy Dodd, Textiles Branch: (202) 572-8819.

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 Customs 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 Customs 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 Customs 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 September 4, 2002, CUSTOMS BULLETIN, Vol. 36, No. 36, proposing to revoke New York Ruling Letter (NY) F80802, dated January 11, 2000, relating to the tariff classification of certain gloves.

In New York Ruling Letter (NY) F80802, dated January 11, 2000, the Customs Service classified a certain pair of gloves under subheading 6216.00.4600, HTSUSA, which provides for "Gloves, mittens and mitts: Other: Of man-made fibers: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts."

It is now Customs determination that the proper classification for the gloves is subheading 6216.00.5820, HTSUSA, which provides for "Gloves, mittens and mitts: Other: Of man-made fibers: Other With fourchettes, Other." Headquarters Ruling Letter (HQ) 965714 revoking NY F80802 is set forth in the Attachment to this document.

Although in this notice Customs is specifically referring to one New York Ruling Letter (NY), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, a ruling letter, an internal advice memorandum or decision or a protest review decision) on the merchandise subject to this notice, should have advised Customs during the comment period.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY F80802 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 965714, *supra*. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical merchandise.

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

Dated: November 15, 2002.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 15, 2002.

CLA-2 RR:CR:TE 965714 ttd
Category: Classification
Tariff No. 6216.00.5820

MARTY LANGTRY
TOWERGROUP INTERNATIONAL
1114 Tower Lane
Bensenville, IL 60106

Re: Revocation of New York Ruling Letter F80802; Gloves.

DEAR MS. LANGTRY:

This letter is pursuant to Customs reconsideration of New York Ruling Letter (NY) F80802, dated January 11, 2000, filed on behalf of Ironclad Performance Wear Corporation (Ironclad), regarding classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a pair of gloves. Per your request dated September 6, 2002, via facsimile, we have addressed this correspondence to you, rather than to your client, Mr. Eduard Jaeger of Ironclad. After review of NY F80802, Customs has determined that the classification of the gloves considered under subheading 6216.00.4600, HTSUSA, was incorrect. For the reasons that follow, this ruling revokes NY F80802.

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. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY F80802 was published on September 4, 2002, in the CUSTOMS BULLETIN, Volume 36, Number 36. As explained in the notice, the period within which to submit com-

ments on this proposal was until October 4, 2002. Two sets of comments were received in opposition to the notice of revocation. After careful consideration of the comments, as set forth in the LAW AND ANALYSIS section of this ruling, we have determined to proceed with the revocation.

Facts:

The article under consideration is a pair gloves, identified as style IC-0200GRBBU. In NY F80802, Customs classified the merchandise under subheading 6216.00.4600, HTSUSA, which provides for "Gloves, mittens and mitts: Other: Of man-made fibers: Other gloves, mittens and mitts, all the foregoing specially designed for use in sports, including ski and snowmobile gloves, mittens and mitts." In that ruling, the merchandise was described as:

[A] glove with a complete palmside from fingertips to wrist constructed of a synthetic leather fabric. The balance of the glove is made of mesh fabric, with the exception of the backside thumb which consists of a terry cloth sweat panel. The glove features padded synthetic leather reinforcements at the palm and the base of the palmside fingers, a reinforced thumb/forefinger crotch, "Ironclad" embossed vinyl overlays sewn on the padded backside knuckle area and palmside pull on tab, and coated knit fabric trim at the vented wrist which is secured by a hook and loop fabric closure. The cumulation of features show [*sic*] a design for use in the sport of competitive biking.

Issue:

Whether the merchandise is specially designed for use in sports.

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides, in part, that classification decisions are to be "determined according to the terms of the headings and any relative section or chapter notes * * *." In the event that 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 Harmonized Commodity Description and Coding System Explanatory Notes (EN) constitute the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. While neither legally binding nor dispositive of classification issues, the EN provide commentary on the scope of each heading of the HTSUSA and are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989).

Subheading 6216.00.46, HTSUSA, provides for, in part, gloves, mittens and mitts, specially designed for use in sports. As this is a "use" provision, to determine whether an article is classifiable in subheading 6216.00.46, HTSUSA, requires consideration of whether the article has particular features that adapt it for the stated purpose. In *Sports Industries, Inc. v. United States*, 65 Cust. Ct. 470, C.D. 4125 (1970), the court, in interpreting the term "designed for use," under the Tariff Schedules of the United States, the predecessor to the HTSUSA, examined not only the features of the articles, but also the materials selected and the marketing, advertising and sale of the article. The case suggests that, to be classifiable in subheading 6216.00.46, the subject gloves must be shown to be, in fact, specially designed for use in a particular sport.

Concerning the proper classification of sports gloves, numerous other court cases have examined the term "specially designed for use in sports." In *American Astral Corp. v. United States*, 62 Cust. Ct. 563, C.D. 3827 (1969), the court held that certain gloves were properly classified as lawn tennis equipment because the evidence established that the gloves were specially designed for use in the game of tennis. At the time, the Tariff Schedules of the United States included provisions for tennis equipment covering specially designed protective articles, such as gloves. The court noted the glove's distinguishing characteristics, which set it apart from ordinary gloves worn as apparel. Those features included: (a) an absorbent terry cloth back; (b) a partially perforated lambskin palm designed to aid grip, provide protection, and prevent perspiration by allowing air circulation; (c) fourchettes made from stretch material; (d) elasticized wrist for a snug fit and support; and (e) a button positioned to prevent interference to the player. Additionally, the court considered factors such as the nature of the importer's business, how the gloves were advertised in the trade, the types of stores where the gloves were sold, and the fact that the

gloves were sold only in single units and not in pairs. The court also noted that, the fact that the gloves had other possible uses did not preclude their classification as sporting equipment. See, U.S. Customs Service, *What Every Member of the Trade Community Should Know About: Gloves, Mittens & Mitts, Not Knitted or Crocheted Under the HTSUS*, 32 Cust. B. & Dec. 51 (Dec 23, 1998).

In *Porter v. United States*, 409 F. Supp. 757; 76 Cust. Ct. 97, Cust. Dec. 4641 (1976), the court held that certain motorcross gloves, which possessed features specially designed for use in the sport of motorcross, were accordingly, specially designed for use in sports, even though not used exclusively for the sport of motorcross. In *Porter*, the court based its conclusion on the fact that motorcross gloves featured special characteristics and construction, specially designed for the sport of motorcross. These characteristics included a shortened palm, a reinforced thumb, an elastic band, protective strips or ribbing, and an out-seam construction. These features complimented the particular protective needs of the driver while racing with the specially designed motorcross bike on a dirt track. It was also shown that motorcross racing encompasses internationally accepted rules and that the American Motorcycle Association Motorcross Competition Rule Book specifically requires certain protective clothing and equipment, of which the motorcross gloves at issue were one type that complied with the requirements for the gloves. While the court noted that the gloves were subject to use outside the sport of motorcross, the plaintiff had already demonstrated that the gloves were primarily designed for the sport of motorcross. Moreover, the features, which made the gloves ideal for the sport of motorcross, rendered them useless or cumbersome for other types of motorcycle riding. Thus, the court in *Porter* found that the merchandise considered was designed to meet the needs of the sport.

One commenter argued that neither the court in *Sports Industries* nor *Porter* considered “the gloves’ marketing and sales characteristics, or the actions of the relevant importers in selling such gloves.” The commenter further argued that the court in *Sports Industries, Inc.*, only examined the characteristics and construction of the articles considered. We disagree.

First, in *Sports Industries, Inc.* (at page 472), the court noted that the gloves considered were “**used primarily, if not exclusively, in the non-commercial, sports activity of underwater swimming**, and are not suitable for any other practical use.” (*Emphasis added*). Likewise, in *Porter* (at page 761), the court found that the witnesses’ testimony “clearly establishes that the gloves in issue were specially designed for, **and used by motorcross riders engaged in the sport of motorcross.**” (*Emphasis added*). Accordingly, careful review indicates that the courts in both cases weighed factors such as marketing and sales characteristics as well as the disposition of the importer and the ultimate use of the gloves.

Thus, a conclusion that a certain glove is “specially designed” for use in a particular sport, requires more than a mere determination of whether the glove or pair of gloves could possibly be used in a certain sport. In determining whether gloves are specially designed for use in sport, Customs considers the connection the gloves have to an identified sporting activity, the features designed for that sporting activity, and how the gloves are advertised and sold in relation to the named sport.

While the term “sport” is not defined by the tariff, in Headquarters Ruling Letter (HQ) 089849, dated August 16, 1991, Customs noted that common dictionaries defined the term “sport” as “an activity requiring more or less vigorous bodily exertion and carried on according to some traditional form or set of rules, whether outdoors, as football, hunting, golf, racing, etc., or indoors, as basketball, bowling, squash, etc.” In *Neuman Importing Company, Inc. v. United States*, 415 F. Supp. 375, Cust. Ct. 143, Cust. Dec. 4648 (1976), in finding backpacking to be a sport, the court determined that the term “sport” is not solely defined in terms of competitiveness, but also arises from the development and pursuit of a variety of skills. In this respect, in HQ 957848, dated August 10, 1995, Customs found hunting, fishing, canoeing, archery and similar outdoor activities to fall within the purview of “sport.” *The American College Dictionary* (1970) defines the term “sport” as “a pastime pursued in the open air or having an athletic character.” Likewise, *Webster’s New Dictionary of the English Language* (2001) defines “sport” as:

- 1: a source of diversion: PASTIME
- 2: physical activity engaged in for pleasure.

Notably, the term “sport” appears to also encompass activities in which individuals engage professionally (i.e., professional sports).

In HQ 965131, dated October 25, 2001, Customs found that gloves designed for use in the sports of hunting or competitive shooting were designed for use in sports. In HQ 965131, marketing materials were submitted, promoting the benefits and design features of the gloves, which made them ideal for the outdoor sportsman. Moreover, the gloves were marketed through, and sold in, outdoor sporting goods stores that catered to hunters and competitive shooters. Likewise, in HQ 958892, dated October 4, 1996, we found that gloves which were close fitting and unlined with palmside polyurethane coated fabric and nylon knit fourchettes were specially designed for equestrian sports. Based on the detailed advertising, the term "All Purpose" was found to refer to the multiple equestrian activities for which the gloves could be used within the sport.

Comparatively, in HQ 954704, dated November 12, 1993, Customs ruled that lined leather gloves were not "specially designed" for use in the sport of snowmobiling. After examining the gloves and accompanying advertisements, we found that the gloves were equally suited for use as either motorcycle or snowmobile gloves. Therefore, the claim that the gloves were "designed, marketed and sold specifically as snowmobile gloves" was unsupported due to ambiguous advertising. Similarly, in HQ 088374, dated June 24, 1991, Customs ruled that the gloves at issue were not ski gloves, because the importer provided no evidence that they were principally used in, or designed for, the sport of skiing. In HQ 088374, there was no evidence of marketing or sale of the gloves as ski gloves, absent a hang tag including the word "ski." Moreover, in HQ 957848, dated August 10, 1995, Customs found that the advertisement accompanying the gloves showed the wearer engaged in non-sport activities such as writing, playing a trumpet, looking through a bag and taking pictures. In that ruling, the gloves (half-fingered with synthetic palm patch) were not considered to be designed, marketed and sold specifically for use as sports gloves.

In HQ 083450, dated August 25, 1989, in determining whether gloves were "specially designed for use in sports," Customs found that a glove designed as a multi-sport glove and used in many different sports did not necessarily satisfy the meaning of "designed for use in sports." In that ruling, we interpreted the term "specially designed for sports" to mean that the gloves must have special design features particular to the identified sport. Comfort, breathability and a reinforced thumb were not sufficient to show that special design features pertained specifically to any one of the sports cited (bicycling, cross-country skiing, ATV-motorcycling racing and boating).

Most recently, in HQ 965157, dated May 14, 2002, Customs ruled that five styles of gloves were not properly classified as gloves specially designed for use in sports. In that ruling, the gloves had some features associated with sports gloves, such as hook and loop closures, and synthetic materials. However, they were not classifiable under subheading 6216.00.4600, HTSUSA, because they were not sufficiently marketed, advertised and sold for use in the sports for which they were alleged to be designed. Likewise, in HQ 957848, dated August 10, 1995, we declined to classify the gloves considered therein (half-fingered with synthetic palm patch) as being "specially designed for sport," since they were not designed, marketed and sold specifically for use as sports gloves.

In this case, when NY F80802 was originally issued on January 11, 2000, Customs ruled that the gloves at issue could be used in competitive biking, which is commonly recognized as a sporting activity. However, our finding that the gloves "show a design for use in the sport of competitive biking," is insufficient to support a finding that they were "specially designed" for use in sports. To show that gloves are specially designed for use in a sport (in this case, competitive biking), it must be shown that in addition to their features, they are regularly advertised, marketed and sold in suitable and customary channels associated with the intended sport. While the submitted gloves may have shown characteristics useful in the sport of competitive biking, it was an error to conclude that the gloves were specially designed for competitive biking.

One commenter claimed that Customs is "imparting a significantly more stringent standard" on the subject importer by requiring its gloves to be more than only "suitable" for use in the sport of competitive biking. The commenter cited NY H80723, dated June 20, 2001, NY F82119 dated January 24, 2000, and NY 879288, dated November 3, 1992, wherein Customs classified different types of gloves as sports gloves, based on a finding that they showed a "design for use" in a declared sport. We are currently in the process of reviewing the three rulings cited, to establish the proper classification for the merchandise in each situation. To the extent that any of the cited rulings, in addition to any other ruling not yet identified, are inconsistent with the holding in this ruling, such ruling will be revoked.

After review of NY F80802, we find no evidence to support the claim that the subject gloves are specially designed for the sport of competitive biking. There is no advertising or marketing material to establish any connection between the glove and the sport of competitive biking, and no indication that the subject gloves are sold to, and used by, competitive bikers. According to IronClad's marketing material, the company provides gloves for the workplace, revealing in part that:

Ironclad Performance Wear has revolutionized the way the world looks at gloves. Incorporating the precise features and high tech synthetic materials designed for use in sports, we have created gloves that offer increased protection without compromising dexterity. Available in eight task specific models, Ironclad Gloves help you tackle whatever job is at hand.

See <<http://www.iclad.com>> Additional marketing information provides:

The most important connection between you and your tools is your hands, that's why we put so much into our gloves. We studied hand bio-mechanics and engineered these gloves to specific movements and tasks you perform each day on the job. We asked the tradesmen just like you what they need from a pair of gloves and researched hundreds of materials to find the most durable and cool, yet supple. When you try on these gloves you will find that they feel unique and let your hand move the way no other glove does.

In response to the demanding needs of the professional, IronClad Performance Wear offers the first and only line of task specific gloves * * *.

See <<http://km01.com/about/ironclad.html>> However, missing from the company's marketing materials, either printed or on its website, is any reference to the sporting activity of competitive biking. Research into the retail sale of IronClad gloves reveals that the gloves are sold at hardware stores and industrial supply stores which sell products to workers in a variety of trades. Yet, the gloves are not advertised as being sold at retailers such as sporting goods stores or bicycle shops, where competitive biking gloves would typically be purchased. See <http://www.iclad.com/new_retailloc.htm>

Similar to our findings in HQ 965157 (cited above), the marketing, advertising, and sales of the subject gloves fail to demonstrate that they have features specially designed for the sport of competitive biking. Unlike HQ 965131 (cited above), in which sufficient marketing materials were available and submitted promoting the benefits and design features of the gloves which made them ideal for the outdoor sportsman, such information does not appear to exist in this case. Rather, as in HQ 965157 and HQ 954704 (cited above), the claim that the subject gloves are specially designed for sport is unsubstantiated and ambiguous at best. Accordingly, the subject gloves are not properly classified in subheading 6216.00.46, HTSUSA, as gloves specially designed for use in sports.

While the gloves may indeed be used by some for an athletic activity, such as competitive biking, Customs finds that the subject gloves are not specially designed for use in competitive biking, nor are they marketed, advertised or sold in channels indicating their use in the sport of biking. The gloves at issue will primarily be worn for industrial work and any athletic use would be a secondary or fugitive use. The likelihood that the subject gloves could have a fugitive use does not remove them from classification according to their primary use, in this case—industrial use. The design, construction and function of the subject gloves for industrial use determines their classification, whether or not there is an incidental or subordinate function in sports.

One commenter cited NY A86298, dated August 8, 1996, and NY B85790, dated June 5, 1997, where Customs classified "Mechanix" gloves as being specially designed for use by mechanics in the sport of automobile racing. The commenter contended that the subject gloves should be treated in the same manner as "Mechanix" and similar gloves. Another commenter argued that the subject gloves and the gloves considered in NY A86298 and NY B85790 are in fact physically identical.

We acknowledge that the subject gloves may have similar features to "Mechanix" gloves, however, we do not find that they are physically identical nor that the subject gloves should be treated as specially designed for use in sports. Physically, a careful side-by-side examination reveals that the Mechanix gloves considered in NY A86298 and NY B85790 have distinctive characteristics, including hidden fingertip seams, a smooth palm and modest vents in the fingers. In comparison, the IronClad gloves at issue have additional fingertip and palmside padding that is not present on the "Mechanix" gloves. Though subtle, differences nevertheless exist and in point of fact, the "Mechanix" gloves and subject IronClad gloves are not physically identical.

Beyond the physical differences, further review of NY A86298 and NY B85790, reveals that the gloves considered in those rulings, unlike the subject gloves, were specially designed for use in motorsports. In those rulings, the marketing materials convincingly showed that the gloves were specially designed for use in motorsports racing. The advertising and marketing materials for “Mechanix” gloves focus almost completely on motorsports racing and specifically market the gloves to racing enthusiasts. In fact, the great majority of “Mechanix” printed advertisements are placed in magazines and publications devoted to racing and racing enthusiasts. The printed Mechanix Wear advertisements and catalogs are almost entirely comprised of motorsports pictures, illustrating pit crews engaged in NASCAR, drag racing and motorcross. In addition, the company’s website is also vastly devoted to the sport of motor racing, providing recent race results and including multiple Internet links to racing team home pages and NASCAR on the World Wide Web.

Among other factors, we considered the company’s advertising claims that the gloves were “designed with direct input from race teams” and that the company provides the right gloves “No matter what form of motorsports * * *.” Mechanix Wear advertising provides in part:

Since its inception, Mechanix Wear has been the leading name in motorsports glove technology. After pioneering our Original Glove design for pit crews in NASCAR back in the late 80’s * * *

Moreover, the gloves considered in those rulings were officially licensed by NASCAR and used by multiple NASCAR racing team pit crews.

In this case, the marketing and advertising fail to demonstrate that the subject gloves have features specially designed for the sport of competitive biking. Unlike HQ 965131 (cited above), in which sufficient marketing materials were submitted that promoted the benefits and design features of the gloves which made them ideal for the outdoor sportsman, similar information does not exist here. Rather, like HQ 954704 (cited above), the claim that the subject gloves are specially designed for sport is supported only by unsubstantiated claims which are ambiguous at best. Accordingly, the subject gloves are not properly classified as gloves specially designed for use in sports.

One commenter argued that subheading 6216.00.4600, HTSUSA, is a “‘designed for use’ provision, not a ‘use’ provision” and concludes that “an examination of the principal use of the class or kind of merchandise to which the subject gloves belong is not required.” This commenter contended that the subject gloves are specially designed for use in biking, based solely on their characteristics. We disagree.

To determine whether a particular tariff term constitutes a “use” provision, we turn to Additional U.S. Rule of Interpretation 1, which reads in pertinent part:

1. In the absence of special language or context which otherwise requires—

- (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

There are two principal types of classification by use: (1) classification according to the use of the class or kind of articles to which the imported merchandise belongs and (2) classification according to the actual use of the imported merchandise. Sturm, Customs Law & Admin § 53.3 (1995). “A designation by use may be established, although the word ‘use’ or ‘used’ does not appear in the language of the statute.” *E.C. Lineiro v. United States*, 37 C.C.P.A. 10, 14, C.A.D. 411 (1949). While some tariff provisions expressly declare that classification of the designated merchandise is dependent upon principal use, in most cases, principal use is implied from the language of the HTSUSA.

Here, while “actual use” is inapplicable, “principal use” does apply. The commenter argued that subheading 6216.00.4600, HTSUSA, is not a “use” provision essentially because the language of the provision includes the words “specially designed.” However, it is irrefutable that the word “use” actually appears in the language of the subheading. Therefore, subheading 6216.00.4600, HTSUSA, is, in any case, considered a “principal use” provision. When applying a principal use provision, we must ascertain the class or kind of goods, which are involved and decide whether the subject merchandise is a member of that class.

Additionally, we acknowledge the fact that a glove may be used for purposes other than sporting activities does not necessarily prevent it from being classified as a glove specially designed for use in sports. The test for principal use is not solely dependent on actual use of the specific merchandise at issue but rather the principal use of that “class or kind” of

merchandise to which the goods belong. Determining whether goods fall into a particular “class or kind” of merchandise, requires consideration of certain commercial factors enumerated by the court in *United States v. Carborundum Co.*, 63 C.C.P.A. 98, 102, 536 F.2d 373, 377, cert. denied, 429 U.S. 979, 50 L. Ed. 2d 587, 97 S. Ct. 490 (1976). The factors cited are: the expectation of the ultimate purchaser, channels of trade, general physical characteristics, environment of sale, economic practicality of so using the import, and recognition in the trade of this issue.

In HQ 963746, dated May 16, 2001, we applied the *Carborundum* factors in finding that disposable latex gloves for non-medical (industrial) use and medical use latex gloves were not of the same “class or kind” of merchandise. In that ruling, the gloves for both the industrial use and medical use were made on the same machines and were composed of the same materials. In fact, the only differences between the gloves were the higher leak resistance and degradation qualities of the medical use gloves. Essentially, the quality differences and marketing of the gloves distinguished the medical use gloves from the industrial use gloves.

Customs determined in HQ 963746 that while any particular glove for industrial use is likely to be physically exactly like a medical use glove, a given box of industrial use gloves would likely contain a higher number of defective gloves than a box of the medical use gloves. In this case, the subject gloves may resemble gloves designed specially for the sport of competitive biking, with features that include synthetic leather material on the palm, coated fabric reinforcements, knitted fabric fourchettes, and an elasticized wristband with a rubberized tab closure secured with hook and loop fasteners.

In HQ 963746, we determined that the distinctions were based on real differences in the use of the gloves, whether or not any particular glove from a box labeled “not for medical use” could theoretically form an effective barrier against blood-borne pathogens and other bodily fluids. Here, the subject gloves, whether or not they could theoretically be used in competitive biking, may share similarities with gloves used in the sport of competitive biking. Yet, they are marketed and sold for industrial purposes and therefore, other factors must also be considered, including the expectation of the ultimate consumer, the channels of trade and the environment of sale.

In HQ 963746, the expectation of the ultimate purchaser of the medical gloves was the assurance of a higher quality product to the lower quality of the industrial use gloves. In this case, the ultimate purchaser expects that the subject gloves will provide necessary protection to the hands of workers in a variety of trades, not that they will be beneficial in the sport of competitive biking.

Unlike the latex gloves in HQ 963746, where the industrial use gloves were sold through the same retailers as the medical use gloves, the subject gloves are sold through different channels of trade than gloves used for sports. While the subject gloves are sold through retailers in the industrial and safety industries, gloves specially designed for the sport of competitive biking are sold primarily through retailers like sporting goods stores and outdoor outfitters. Moreover, as the industrial gloves did not enter the same industries as the medical use gloves in HQ 963746, the subject gloves do not enter the same channels of trade as gloves designed specially for use in sports.

After determining that the products were actually different in HQ 963746, we concluded that they did not belong to the same class or kind of merchandise. In this case, balancing the *Carborundum* factors, we find that while the subject gloves may have the general physical characteristics of gloves used in sports, they are not of the same class or kind of merchandise as gloves specially designed for use in sports. Weighing the expectation of the ultimate purchaser, combined with the channels of trade and the environment of sale of the subject gloves, we find that they are not specially designed for use in competitive biking.

As the gloves under consideration are not specially designed for use in sports, they are not properly classified in subheading 6216.00.4600, HTSUSA. The subject gloves are properly classified in subheading 6216.00.5820, HTSUSA, as “Gloves, mittens and mitts: Other: Of man-made fibers: Other: With fourchettes, Other.”

Holding:

The subject merchandise is classified in subheading 6216.00.5820, HTSUSA, which provides for “Gloves, mittens and mitts: Other: Of man-made fibers: Other: With fourchettes, Other.” The applicable rate of duty is 21 cents per kilogram plus 10.5 percent *ad valorem* and the textile restraint category is 631.

NY F80802, dated January 11, 2000, 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.

The designated textile and apparel category may be subdivided into parts. If so, the visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an internal issuance of the U.S. Customs Service which is updated weekly and is available **for inspection** at your local Customs office. The *Status Report on Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Service Website at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

PROPOSED REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF ALKALINE BATTERIES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation and modification of ruling letters and revocation of treatment relating to tariff classification of alkaline batteries.

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 intends to revoke one ruling letter and modify one ruling letter pertaining to the tariff classification of alkaline batteries under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before January 3, 2003.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: David S. Salkeld, General Classification Branch, (202) 572-8781.

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 Customs 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 Customs 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 Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke one ruling letter and modify one ruling letter pertaining to the classification of alkaline batteries. Although in this notice Customs is specifically referring to two rulings, NY I84002, and NY D83627, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the two 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 Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified

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

In NY I84002 dated July 24, 2002, and NY D83627 dated November 12, 1998, set forth as Attachments A and B to this document, respectively, Customs classified alkaline batteries in subheading 8506.80.00, HTSUS, as: "Primary cells and primary batteries; parts thereof * * * Other primary cells and primary batteries."

It is now Customs position that the subject alkaline batteries are classified in subheading 8506.10.00, HTSUS, as: "Primary cells and primary batteries; parts thereof * * * Manganese dioxide." Proposed HQ 966038 modifying NY I84002, and proposed HQ 966022 revoking NY D83627 are set forth as Attachments C and D respectively.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY I84002 and to revoke NY D83627 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966038 and HQ 966022. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: November 18, 2002.

GAIL A. HAMILL,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, July 24, 2002.
CLA-2-82:RR:NC:N1:113 I84002
Category: Classification
Tariff No. 8211.93.0030,
8513.10.2000 and 8506.80.0000

MS. JENNY DAVENPORT
WAL-MART STORES, INC.
702 Southwest 8th Street
Bentonville, AR 72716

Re: The tariff classification of a flashlight and multipurpose tool from China.

DEAR MS. DAVENPORT:

In your letter dated July 3, 2002, you requested a ruling on tariff classification.

The samples you provided are two retail packages containing flashlights, two AA-alkaline batteries and different multipurpose tools. M300WQE12AHT contains a flashlight and a multipurpose tool with a hammer head. The tool contains a hammer, file, saw, knife blade, corrugated blade, sockets, and a can opener. It comes with a fitted pouch.

M300WQE12AMT contains a flashlight and a folding pair of pliers. The pliers also contain a file, ruler, two knife blades, two screwdrivers, a saw and a bottle opener. It comes with a fitted pouch.

The applicable subheading for the multipurpose tools will be 8211.93.0030, Harmonized Tariff Schedule of the United States (HTS), which provides for knives having other than fixed blades, pen knives, pocket knives and other knives which have folding blades. The general rate of duty will be 3 cents each plus 5.4 percent ad valorem.

The applicable subheading for the flashlights will be 8513.10.2000, Harmonized Tariff Schedule of the United States (HTS), which provides for portable electric lamps designed to function by their own source of energy * * * flashlights. The general rate of duty will be 12.5 percent ad valorem.

The applicable subheading for the AA alkaline batteries will be 8506.80.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other primary cells and primary batteries. The rate of duty will be 2.7 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 646-733-3018.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

New York, NY, November 12, 1998.

CLA-2-85:RR:NC:1:112 D83627

Category: Classification

Tariff No. 8506.80.0000

MR. FRANKLYN T. YEPEZ

TRANS-BORDER CUSTOMS SERVICES, INC.

JFK International Airport Cargo Building #80, Rm. 228

Jamaica, NY 11430

Re: The tariff classification of alkaline batteries from Belgium.

DEAR MR. YEPEZ:

In your letter dated October 13, 1998, on behalf of Innopex Limited, you requested a tariff classification ruling.

As indicated by the submitted sample, the merchandise in question consists of AA alkaline batteries.

The applicable subheading for the AA alkaline batteries will be 8506.80.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for other primary cells and primary batteries. The rate of duty will be 3.2 percent ad valorem.

Inquiries regarding trademark issues should be addressed to the Intellectual Property Rights Branch, U.S. Customs Service, 1300 Pennsylvania Ave., Washington, DC 20229.

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 David Curran at 212-466-5680.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 966038 DSS
Category: Classification
Tariff No. 8506.10.00

MS. JENNY DAVENPORT
WAL-MART STORES, INC.
702 Southwest 8th Street
Bentonville, AZ 72716

Re: Proposed Modification of NY I84002; alkaline batteries.

DEAR MS. DAVENPORT:

This letter is pursuant to Customs reconsideration of New York ruling (NY) I84002, dated July 24, 2002, which was issued to you by the Director, National Commodity Specialist Division with respect to the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of several articles, including alkaline batteries. After review of NY I84002, Customs has determined that the classification of alkaline batteries under subheading 8506.80.00, HTSUS, was incorrect.

Facts:

In NY I84002, Customs described several articles, including two AA-alkaline batteries. In NY I84002, Customs classified the subject alkaline batteries under subheading, 8506.80.00, HTSUS, which provides for "Primary cells and primary batteries; * * * Other primary cells and primary batteries."

Issue:

What is the proper tariff classification for alkaline batteries?

Law and Analysis:

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

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Other Customs rulings have classified alkaline batteries under subheading 8506.10.00, HTSUS. See NY G82460, dated October 20, 2000, and NY I85737, dated September 6, 2002.

Thus, the HTSUS provisions under consideration are as follows:

8506	Primary cells and primary batteries; parts thereof:
8506.10.00	Manganese dioxide
*	* * * * *
8506.80.00	Other primary cells and primary batteries

Goods of heading 8506 generate electrical energy by means of chemical reactions. Primary cells of heading 8506 consist of a container holding an alkaline or non-alkaline electrolyte in which two electrodes, an anode and a cathode, are immersed. Each electrode is provided with a terminal or other arrangement for connection to an external circuit. Primary cells may be used individually or they may be grouped together in batteries, either in series, or in parallel or a combination of both. The principal characteristic of goods of heading 8506 is that they cannot be readily or efficiently recharged. Heading 8506 provides for a class of goods *eo nomine*, by name. See *HQ 954373*, dated September 14, 1993. Therefore, alkaline batteries are classified under heading 8506, HTSUS.

The EN for subheadings 8506.10, 8506.30 and 8506.40, (p. 1631), provides, in pertinent part " * * * Classification in these subheadings is determined by the composition of the

cathode (depolarizing electrode) * * *” Alkaline batteries generally contain cathodes composed of manganese dioxide. *Van Nostrand’s Scientific Encyclopedia* (5th Ed. 1976) provides in pertinent part:

Alkaline Primary Cells. The electrochemical system of alkaline cells is comprised of a zinc anode of large surface area, a manganese dioxide cathode of high density, and a potassium-hydroxide electrolyte * * * Two principal features [of an alkaline battery] are a manganese dioxide cathode of high density in conjunction with a steel can which serves as a cathode current collector and a zinc anode of extra high surface area in contact with the electrolyte.

Therefore, because the cathode for alkaline batteries is made from manganese dioxide, the instant alkaline batteries are specifically provided for under subheading 8506.10.00, HTSUS.

Holding:

In accordance with the above discussion, the correct classification for alkaline batteries is subheading 8506.10.00, HTSUS, which provides for “Primary cells and primary batteries; * * * Manganese dioxide.”

NY I84002 is MODIFIED.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 966022 DSS
Category: Classification
Tariff No. 8506.10.00

MR. FRANKLYN T. YEPEZ
TRANS-BORDER CUSTOMS SERVICES, INC.
JFK International Airport
Cargo Building #80, Rm. 228
Jamaica, NY 11430

Re: Proposed Revocation of NY D83627; alkaline batteries from Belgium.

DEAR MR. YEPEZ:

This letter is pursuant to Customs reconsideration of New York ruling (NY) D83627, dated November 12, 1998, which was issued to you on behalf of your client, Innopex Limited, by the Director, National Commodity Specialist Division with respect to the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of alkaline batteries. After review of NY D83627, Customs has determined that the classification of alkaline batteries under subheading 8506.80.00, HTSUS, was incorrect.

Facts:

In NY D83627, Customs described the merchandise as AA alkaline batteries. In NY D83627, Customs classified the subject alkaline batteries under subheading, 8506.80.00, HTSUS, which provides for “Primary cells and primary batteries; * * * Other primary cells and primary batteries.”

Issue:

What is the proper tariff classification for alkaline batteries?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined ac-

ording 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.

In interpreting the headings and subheadings, Customs looks to the Harmonized Commodity Description and Coding System Explanatory Notes (EN). Although not legally binding, they provide a commentary on the scope of each heading of the HTSUS. It is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS. See T.D. 89-90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Other Customs rulings have classified alkaline batteries under subheading 8506.10.00, HTSUS. See NY G82460, dated October 20, 2000, and NY I85737, dated September 6, 2002.

Thus, the HTSUS provisions under consideration are as follows:

8506	Primary cells and primary batteries; parts thereof:
8506.10.00	Manganese dioxide
*	* * * * *
8506.80.00	Other primary cells and primary batteries

Goods of heading 8506 generate electrical energy by means of chemical reactions. Primary cells of heading 8506 consist of a container holding an alkaline or non-alkaline electrolyte in which two electrodes, an anode and a cathode, are immersed. Each electrode is provided with a terminal or other arrangement for connection to an external circuit. Primary cells may be used individually or they may be grouped together in batteries, either in series, or in parallel or a combination of both. The principal characteristic of goods of heading 8506 is that they cannot be readily or efficiently recharged. Heading 8506 provides for a class of goods *eo nomine*, by name. See *HQ 954373*, dated September 14, 1993. Therefore, alkaline batteries are classified under heading 8506, HTSUS.

The EN for subheadings 8506.10, 8506.30 and 8506.40, (p. 1631), provides, in pertinent part “* * * Classification in these subheadings is determined by the composition of the cathode (depolarizing electrode) * * *” Alkaline batteries generally contain cathodes composed of manganese dioxide. *Van Nostrand’s Scientific Encyclopedia* (5th Ed. 1976) provides in pertinent part:

Alkaline Primary Cells. The electrochemical system of alkaline cells is comprised of a zinc anode of large surface area, a manganese dioxide cathode of high density, and a potassium-hydroxide electrolyte * * * Two principal features [of an alkaline battery] are a manganese dioxide cathode of high density in conjunction with a steel can which serves as a cathode current collector and a zinc anode of extra high surface area in contact with the electrolyte.

Therefore, because the cathode for alkaline batteries is made from manganese dioxide, the instant alkaline batteries are specifically provided for under subheading 8506.10.00, HTSUS.

Holding:

In accordance with the above discussion, the correct classification for alkaline batteries is subheading 8506.10.00, HTSUS, which provides for “Primary cells and primary batteries; * * * Manganese dioxide.”

NY D83627 is REVOKED.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF AN INSULATED OR PADDED BACKPACK

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of an insulated or padded backpack.

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 intends to revoke one ruling letter relating to the tariff classification, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), of an insulated or padded backpack. Customs also proposes to revoke any treatment previously accorded by it to substantially identical merchandise. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before January 3, 2003.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at: U.S. Customs Service, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: J. Steven Jarreau, Textiles Classification Branch: (202) 572-8817

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 emerged 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 Customs 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 Customs share responsibility in carrying out import re-

quirements. 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 Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke one ruling letter relating to the tariff classification of an insulated or padded backpack.

Although Customs refers in this notice to one New York Ruling Letter, this notice covers any rulings on this merchandise that may exist, but have not been specifically identified. Customs 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, an internal advice memorandum or decision or a protest review decision) on the merchandise subject to this notice, which classified the merchandise contrary to this notice, should advise Customs during this comment period. An importer's failure to advise Customs of a specific interpretive ruling or decision classifying substantially identical merchandise not identified in this notice, may raise issues of reasonable care on the part of the importer or its agent for importation of merchandise subsequent to the effective date of the final decision on this notice.

The Customs Service, 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, also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of an importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling issued to a third party to importations of the same or similar merchandise, or an importer's or Customs previous interpretation of the HTSUSA. Any person involved with a substantially identical transaction and asserting a claim of treatment should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions may raise issues of reasonable care on the part of the importer or its agent for importation of merchandise subsequent to the effective date of the final decision on this notice.

The Customs Service in New York Ruling Letter (NY) I84912 (Aug. 9, 2002) classified an insulated or padded backpack in subheading 4202.92.9026, HTSUSA. New York Ruling Letter I84912 is set forth as Attachment "A" to this document. After reviewing that ruling, it is Customs determination that the ruling is in error and that insulated or padded backpacks are properly classified pursuant to General Rule of Interpretation 1 in subheading 4202.92.3020, HTSUSA. Proposed Headquarters Ruling Letter (HQ) 965875, revoking NY I84912, is set forth as Attachment "B" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY I84912 and any other rulings not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 965875. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical merchandise. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 19, 2002.

JOHN ELKINS,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, August 9, 2002.
CLA-2-42:RR:NC:TA:341 I84912
Category: Classification
Tariff No. 4202.92.9026

MS. PAULA M. CONNELLY
MIDDLETON & SHRULL ATTORNEYS AT LAW
44 Mall Road, Suite 208
Burlington, MA 01803-4530

Re: The tariff classification of a backpack from China, Taiwan, Philippines and/or Sri Lanka.

DEAR MS. CONNELLY:

In your letter dated August 1, 2002, on behalf of The Gem Group, Inc., you requested a tariff classification ruling for a backpack.

The sample submitted is identified as style MS-SS-9186 that has an overall size of approximately 17" x 11.5" x 5.5" and is teardrop in shape. The item is a carrying bag designed to be worn on the back by means of two padded and adjustable shoulder straps. It has a main compartment and two vertical zippered pouches, 12.5" x 10", on the front of the bag. The pouches are each accessed by means of a nylon coil zipper and are designed to contain notebooks, other stationary articles and/or other personal effects. The shoulder straps are constructed of an inner of 0.25" foamed plastics padding and an outer cover of woven nylon fabric. There is a woven fabric pick-up loop sewn to the top center. It is manufactured of individual panels consisting of a three-layer construction. Each panel is fabricated of an outer surface of woven nylon fabric, a middle layer of 0.25" foamed plastics and an inner layer of woven nylon fabric. The foamed plastic present in the panel construction and shoulder strap is a form of insulation that is used as a shock cushion. The article has a 29" long, nylon coil top zipper closure, which opens across the top and down the left and right sides approximately 2/3rd the height of the bag. The interior main compartment is not fitted or otherwise divided. The interior width of each side panel is approximately 1.5". The overall size of the interior compartment, the thicker than normal foamed plastic and the design of the zipper closure indicate that the bag is primarily intended to carry a device similar to a laptop computer.

The submitted sample does not conform to the written description submitted in your request. Specifically the bag's dimensions are not the same and the sample does not have a

top attached pouch measuring 14" x 9" x 5". This ruling is predicated upon the sample submitted.

The applicable subheading for Style MS-SS-9186, lap top carrying bag, will be 4202.92.9026 Harmonized Tariff Schedule of the United States (HTS), which provides for other containers and cases, other, other, with outer surface of textile materials, other, of man-made fibers, backpacks. The rate of duty will be 18.1 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 646-733-3041.

ROBERT B. SWIERUPSKI,
Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 965875 jsj
Category: Classification
Tariff No. 4202.92.3020

PAULA M. CONNELLY, ESQ.
MIDDLETON & SHRULL
*44 Mall Road
Suite 208
Burlington, MA 01803-4530*

Re: Revocation of NY I84912 (Aug. 9, 2002); Insulated or Padded Backpack; Subheading 4202.92.3020, HTSUSA.

DEAR MS. CONNELLY:

The purpose of this correspondence is to respond to your request dated September 4, 2002. The correspondence in issue requested, on the behalf of your client, The GEM Group, Inc., reconsideration of New York Ruling Letter I84912 (Aug. 9, 2002).

The Customs Service, in NY I84912, classified the merchandise in issue in subheading 4202.92.9026, HTSUSA. Customs has determined, subsequent to reconsidering NY I84912, that the article is properly classified in subheading 4202.92.3020, HTSUSA. Customs is revoking NY I84912 and reclassifying the merchandise in accordance with the analysis set forth in this ruling letter.

This reconsideration and revocation is being issued subsequent to the following: (1) A review of your submission dated September 4, 2002; (2) An examination of the sample identified by the importer as a Gemline "Insulated Backpack," style MS-SS-9186; (3) A review of the 2002 Gemline catalog; and (4) An examination of a hand-drawn front and back diagram of the backpack dated August 27, 2002.

Facts

The article in issue, identified by GEM as an "insulated backpack," is approximately seventeen (17) inches in height, eleven (11) inches in width and five and three-fourths (5³/₄) inches in depth. The Customs Service is advised that the outer surface is composed of nylon textile fabric which an examination reveals to be woven. Customs further examination establishes that the article has a middle layer of plastic foam that is one-fourth (1/4) of an inch thick.

The backpack has one primary compartment with dimensions nearly equal to those of the entire pack. The backpack also has two flat compartments on the front that close by means of vertical zippers. A nylon mesh bottle holder is located on the lower aspect of one side of the pack.

The backpack has a carrying handle sewn to the top, rear aspect of the pack and also has two adjustable shoulder straps. The handle and adjustable or lower aspects of the shoulder straps are made of one (1) inch wide woven nylon webbing. The handle is eight and one-half (8½) inches long. The upper aspects of the shoulder straps are two (2) inches wide and have padding composed of the same material as found between the layers of nylon fabric, i.e., the one-fourth (¼) of an inch thick plastic foam. Plastic clips permanently attached to the bottom aspect of the shoulder pads permit the user to adjust the nylon webbing shoulder strap length. Each complete shoulder strap, at maximum extension, measures approximately thirty-five (35) inches in length.

The adjustable aspects of the woven nylon webbing shoulder straps are sewn to two triangular-shaped pieces of material, one on each side of the lower body of the backpack. The triangular-shaped pieces of material extend one and one-half (1½) inches from the side of the backpack to the tip of the triangle.

Issue:

What is the classification, pursuant to the Harmonized Tariff Schedule of the United States Annotated, of the above-described insulated or padded backpack?

Law and Analysis:

The federal agency responsible for initially interpreting and applying the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is the U.S. Customs Service.¹ The Customs Service, in accordance with its legislative mandate, classifies imported merchandise pursuant to the General Rules of Interpretation (GRI) and the Additional U.S. Rules of Interpretation.²

General Rule of Interpretation 1 provides, in part, that classification decisions are to be “determined according to the terms of the headings and any relative section or chapter notes.” *General Rule of Interpretation 1*. General Rule of Interpretation 1 further states that merchandise which cannot be classified in accordance with the dictates of GRI 1 should be classified pursuant to the other General Rules of Interpretation, provided the HTSUSA chapter headings or notes do not require otherwise. According to the Explanatory Notes (EN), the phrase in GRI 1, “provided such headings or notes do not otherwise require,” is intended to “make it quite clear that the terms of the headings and any relative Section or Chapter Notes are paramount.” *General Rules for the Interpretation of the Harmonized System, Rule 1, Explanatory Note (V)*.

The Explanatory Notes constitute the official interpretation of the Harmonized System at the international level. See Joint Explanatory Statement *supra* note 1, at 549. The Explanatory Notes, although neither legally binding nor dispositive of classification issues, do provide commentary on the scope of each heading of the HTSUSA. The EN are generally indicative of the proper interpretation of the headings. See T.D. 89-80, 54 Fed. Reg. 35127-28 (Aug. 23, 1989); *Lonza, Inc. v. United States*, 46 F.3d 1098, 1109 (Fed. Cir. 1995).

Commencing classification of the GEM backpack, in accordance with the dictates of GRI 1, the Customs Service examined the headings of the HTSUSA. Heading 4202, HTSUSA, provides for the classification of:

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

Since backpacks are designated *eo nomine*, that is by name, in heading 4202, HTSUSA, and since *eo nomine* designations include all forms of the article in issue, the questions become “What merchandise did Congress intend to be considered a “backpack?”” and

¹ See 19 U.S.C. 1500 (West 1999) (providing that the Customs Service is responsible for fixing the final appraisement, classification and amount of duty to be paid); See also Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 100-576, at 549 (1988) reprinted in 1988 U.S. Code Cong. and Adm. News 1547, 1582 [hereinafter Joint Explanatory Statement].

² See 19 U.S.C. 1202 (West 1999); See generally, *What Every Member of The Trade Community Should Know About: Tariff Classification*, an Informed Compliance Publication of the Customs Service available on the World Wide Web site of the Customs Service at www.customs.gov, search “Importing & Exporting” and then “U.S. Customs Informed Compliance Publications.”

“Does the article submitted for classification by GEM fall within the Congressionally intended definition?”

The initial responsibility of the Customs Service is to examine the plain meaning of the statutory text. See *Marcor Dev. Corp. v. United States*, 926 F. Supp. 1124, 1129 (Ct. Int'l Trade 1996) citing *Trans-Border Customs Services v. United States*, 843 F. Supp. 1482, 1485 (Ct. Int'l Trade 1994). If the plain language of the heading establishes the clear and unambiguous intent of Congress, the classification inquiry at the heading level is complete. See *Id.* The meaning of a tariff term, absent contrary congressional intent, is one that is in accord with its common and popular understanding. See *Carl Zeiss, Inc. v. United States*, 195 F. 3^d 1375, 1379 (Fed. Cir. 1999).

It is the conclusion of the Customs Service, subsequent to a review of the tariff schedule, that Congress intended the term “backpack” to be understood in its common and popular meaning. A “backpack” is commonly understood to be a pack or knapsack worn on the back and used to carry personal effects which include equipment, clothing and food. Additional U.S. Note 1 to Chapter 42 specifically provides that “*travel, sports and similar bags*” of heading 4202, HTSUSA, “means goods * * * of a kind designed for carrying clothing and other personal effects during travel, including backpacks * * *.” *Additional U.S. Note 1, Ch. 42, HTSUSA.*

Since neither the tariff schedule nor the Explanatory Notes offer a definition of the term “backpack,” the Customs Service deemed it judicious to confirm the common and popular meaning by reviewing the definition of “backpack.” See generally *Carl Zeiss Id.* (providing that reference to dictionaries and other reliable sources are acceptable methods of construing tariff terms). It is the conclusion of Customs that words such as “backpack” are frequently not defined in the tariff schedule because they are of such common understanding that the reader may fully understand Congress’s intent without additional explanation.

A survey of respected dictionaries provides the following definitions of the word “backpack”:

- (1) “a pack carried on the back” * * * “to carry a pack on the back: used esp. in hiking, camping, etc.” The Compact Edition of the Oxford English Dictionary, Vol. III, p. 45 (R.W. Burchfield, ed., Oxford at the Clarendon Press 1987);
- (2) “to carry (food or equipment) on the back esp. in camping” * * * to carry one’s food or equipment on the back esp. in camping.” Webster’s Third New International Dictionary of the English Language Unabridged (Philip Babco Gove, Ph.D. ed., Merriam-Webster, Inc. 1986);
- (3) “a pack or knapsack, often of canvas or nylon, to be carried on one’s back * * * a piece of equipment designed to be used while being carried on the back.” Random House Unabridged Dictionary (Stuart Berg Flexner ed., Random House, 2nd ed. 1983); and
- (4) “a pack or bundle of supplies to be carried on one’s back, often supported on a lightweight metal frame strapped to the body.” The Random House Dictionary of the English Language (Jess Stein ed., Random House 1973).

It is the conclusion of the Customs Service, subsequent to reviewing the referenced dictionaries, that the term “backpack” is commonly understood to be a pack or knapsack worn on the back and used to carry personal effects which include equipment, clothing and food. The common theme in the definitions is the transportation of personal effects, including food, clothing and equipment, and the manner in which the personal effects are transported.

Endeavoring to develop an even more in-depth understanding of the term “backpack” and appreciating that no single word of the tariff schedule should be read in isolation, it is noted that heading 4202, HTSUSA, does not simply reference “backpacks.” Heading 4202, HTSUSA, in addition to the numerous other types of containers enumerated, specifically references “knapsacks and backpacks.” (Emphasis added) *Heading 4202, HTSUSA.* Congress, by listing “knapsacks and backpacks” together, indicated an intent that knapsacks and backpacks should be understood together.

This understanding of the tariff schedule is supported by the definition of “knapsack” in The Oxford English Dictionary, as well as Webster’s New Collegiate Dictionary. “Knapsack” is defined in The Oxford English Dictionary as “[a] bag or case of stout canvas or

leather, worn by soldiers, strapped to the back and used carrying necessities³; any similar receptacle used by travellers for carrying light articles.” The Compact Edition of the Oxford English Dictionary, Vol. I, p. 1544 (R.W. Burchfield, ed. 1987). Webster’s New Collegiate Dictionary defines “knapsack” as “a bag (of canvas or nylon) strapped on the back and used (as on a hike) for carrying supplies or personal belongings.” Webster’s New Collegiate Dictionary (Henry Bosley Woolf et al. eds., G. & C. Merriam Co. 1977).

The understanding that the terms knapsack and backpack are essentially synonymous is supported by the Court of Customs and Patent Appeals decision in *United States v. Standard Surplus Sales, Inc.*, 667 F.2d 1011 (C.C.P.A. 1981)⁴. The Court in *Standard Surplus* was called on to classify merchandise according to the Tariff Schedule of the United States (TSUS), the predecessor of the HTSUSA. The Court, in determining whether certain imported nylon bags were classifiable as sports equipment or as luggage, examined whether there was a distinction between knapsacks and backpacks. The conclusion drawn was that “knapsack” is a term that preceded the use of the word backpack, but beyond historical considerations, both terms refer to substantially identical merchandise used for carrying clothing and other personal effects and supplies on the back during travel.

It is, therefore, the decision of the Customs Service that Congress, when it enacted the Harmonized Tariff Schedule of the United States Annotated, intended the term “backpack” as employed in heading 4202, HTSUSA, to encompass packs or knapsacks worn on the back and used to carry personal effects, including equipment, clothing and food. Having developed an understanding of the congressionally intended definition of the tariff term “backpack,” the responsibility of the Customs Service turns to determining whether the backpack in issue falls within the meaning of the HTSUSA term.

It is the decision of Customs that the instant backpack comports with the congressionally intended definition of the phrase “knapsacks and backpacks” in heading 4202, HTSUSA. The instant article has the traditional shape of a backpack. It is designed and manufactured to carry personal effects while being worn on the user’s back. It is specifically noted that although the backpack has a handle on the rear aspect of the top, common among many backpacks, the handle is only designed to facilitate moving the pack very short distances. The padded shoulder straps and the adjustable nylon webbing aspect enable the backpack and its contents to be transported longer distances. It is additionally noted that, depending on how the pack is loaded, it could have a strong propensity to swing at an awkward angle if carried by the handle.

The simple innovation of providing insulation or padding to the body of the bag does not change the identity of this item as a backpack. See HQ 963377 (July 10, 2001); and HQ 964539 (Nov. 21, 2001). An *eo nomine* designation in the tariff schedule, without limitation or a showing of contrary congressional intent, includes all forms of the article. See *Robert Bosch Corp. v. United States*, 63 Cust. Ct. 96 (1969); *Nootka Packing Co. v. United States*, 22 C.C.P.A. 464, T.D. 47646 (1935).

The terms of heading 4202, HTSUSA, specifically identify the article in issue. No other HTSUSA heading nor any other *eo nomine* designation within heading 4202, HTSUS, specifically describes the merchandise. The backpack presented by GEM is, therefore, classified in heading 4202, HTSUSA.

Continuing the classification of the GEM backpack, the article is classified in subheading 4202.92.3020, HTSUSA. Subheading 4202.92.3020, HTSUSA, provides for:

- | | |
|---------|---|
| 4202 | Trunks, suitcases, vanity cases, attache cases * * * and similar containers; traveling bags, insulated food or beverage bags, toiletry bags, knapsacks and backpacks * * * and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper: |
| | Other: |
| 4202.92 | With outer surface of sheeting of plastic or of textile materials:
Travel, sports and similar bags:
With outer surface of textile materials: |

³ A “necessary” is defined by The Oxford English Dictionary as “indispensable, requisite, essential, needful; that cannot be done without.” The Compact Edition of the Oxford English Dictionary, Vol. I, p. 1905. (R. W. Burchfield, ed. 1987).

⁴ See Joint Explanatory Statement supra note 1, at 549–50 (stating that decisions of the courts interpreting the TSUS are not dispositive in interpreting the HTSUSA, but should be considered on a case-by-case basis where the nomenclature is unchanged and no dissimilar interpretation is required).

4202.92.30

Other,
Other:

Of man-made fibers:

4202.92.3020

Backpacks.

Counsel for GEM suggests that the backpack is an insulated "food and beverage bag" also classified in heading 4202, HTSUSA. The Customs Service, for the reasons expressed above, concludes otherwise. Customs particularly notes that while an insulated backpack and an insulated food and beverage bag may both be used to maintain the temperature of food and beverage during transport and temporary storage, the distinctive feature of a backpack is the manner in which the personal effects are carried. The unique feature of an insulated backpack that distinguishes it from a food and beverage bag is the fact that it is designed to be carried on the back of the user. The padded and adjustable shoulder straps suggest an item that will be used to transport personal effects over a greater distance than one would expect of an insulated food or beverage bag.

The Customs Service additionally notes the absence of information and features generally expected to be found in insulated food and beverage bags. The GEM backpack does have plastic foam between the inner and outer layers of nylon fabric and counsel does suggest that the plastic foam serves the purpose of insulation. Customs notes, however, that the plastic foam may function not only as insulation, but also as padding. Customs notes that the shoulder straps are padded with the identical plastic foam used in the body of the bag. Customs examination of the backpack does not confirm that the purpose of the plastic foam is to provide an insulative quality to maintain the temperature of food or beverages. The padding does provide the pack with shape and Customs will not speculate as to its primary purpose. GEM has provided no information addressing the ability of the plastic foam to perform as an insulator.

A feature often found in portable containers designed to maintain the temperature of food and beverages is a plastic coating or lining. GEM has not advised Customs of a coating on the nylon, which, if one does exist, would not appear to be able to prevent melting ice or condensation from seeping through the fabric. It is doubtful that the seams, which are only sewn and not heat-sealed, would prevent leakage. The backpack, as presented to Customs for classification, also lacks a permanent or removable liner that would serve to prevent leakage. *See* HQ 964237 (May 22, 2002).

Counsel for the importer suggests that reference be made to the tag attached to the sample article, as well as to the Gemline 2002 catalogue to confirm that the article will be marketed as a container intended to maintain the temperature of food and beverages during travel and temporary storage. Customs finds it is not necessary to resort to marketing information to determine the identity of the backpack. It is further noted that the bag was specifically claimed by GEM to be a sample, not an article in production, that the tag noted "Insulated Backpack," but the notation was hand-written, and that the catalogue did not include the article in issue. Although GEM advised Customs of the part of the catalogue into which this article would be included in future editions, this office found the reference to be vague and of no evidentiary value.

This office also finds little value in the hand-drawn sketch of the backpack. The sample displays all of the information contained in the drawing. Customs notes, however, that the shoulder straps in the drawing are contoured, but the padded straps on the sample are straight.

Customs initially classified the GEM insulated or padded backpack in subheading 4202.92.9026, HTSUSA. It is the determination of this office, subsequent to further review, that the backpack is properly classified in subheading 4202.92.3020, HTSUSA.

Holding:

New York Ruling Letter I84912 (Aug. 9, 2002) is, hereby, revoked.

The GEM Group, Inc. backpack, style MS-SS-9186, is classified in subheading 4202.92.3020, Harmonized Tariff Schedule of the United States Annotated.

The General Column 1 Rate of Duty is eighteen and one-tenth (18.1) percent, *ad valorem*.

The textile quota category is 670.

There are no applicable quota/visa requirements for products of World Trade Organization (WTO) member-countries. The textile category number above applies to merchandise produced in countries that are not members of the WTO.

The designated textile and apparel category may be subdivided into parts. If subdivided, any quota and visa requirements applicable to the subject merchandise may be affected.

Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)* an internal issuance of the U.S. Customs Service which is updated weekly and is available for inspection at your local Customs Service office. The *Status Report On Current Import Quotas (Restraint Levels)* is also available on the Customs Electronic Bulletin Board (CEBB) which can be found on the U.S. Customs Web site at www.customs.gov.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact your local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF LED DISPLAY MODULES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revocation of ruling letter and treatment relating to tariff classification of LED display modules.

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 is revoking a ruling letter pertaining to the tariff classification of LED display modules under the Harmonized Tariff Schedule of the United States ("HTSUS"), and is revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published in the CUSTOMS BULLETIN on October 16, 2002. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after February 3, 2003.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 572-8780.

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 Customs 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 Customs 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 Customs 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 on October 16, 2002, proposing to revoke NY I82314, dated June 19, 2002, which involved the classification of LED display modules. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer’s failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is revoking NY I82314 and any other ruling not specifically identified in order to reflect the proper classification of the car seat pockets pursuant to the analysis set forth in HQ 965802. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service 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: November 19, 2002.

GAIL A. HAMILL,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, November 19, 2002.
CLA-2 RR:CR:GC 965802 GOB
Category: Classification
Tariff No. 8530.90.00

LAYNE R. MOSTAD
PRESIDENT
CAPTUS INTERNATIONAL
*112 Eighth Street W.
Brookings, SD 57006-1143*

Re: Revocation of I82314; LED Display Modules.

DEAR MR. MOSTAD:

This is in reply to your letter of August 6, 2002, in which you request that we reconsider NY I82314 dated June 19, 2002, issued to you by the Director, National Commodity Specialist Division, with respect to the classification, under the Harmonized Tariff Schedule of the United States ("HTSUS"), of certain LED (light emitting diode) display modules.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY I80344, as described below, was published in the CUSTOMS BULLETIN on October 16, 2002. No comments were received in response to the notice.

Facts:

The LED display modules were described in I82314 as follows:

* * * the LED modules consist of a circuit board populated with electronic components and light emitting diodes (LED's). These modules are designed to be incorporated into electronic displays that are used for traffic management on highways and other roads. The displays provide information on traffic conditions.

In your letter of August 6, 2002, you state: "* * * the 'LED module' is a component (part) of the referenced traffic control signs * * * Our modules will be strictly used for the fabrication of electric signs used to control roadway traffic."

In your letter of May 13, 2002 to Customs, you state: "The LED modules will be incorporated into both permanently-mounted and mobile (portable) electronic displays that are used for vehicular traffic management (highways, freeways, etc.) * * * Please note that we only intend to import the LED characters, which form the programmable text portion of the display. The balance of the displays (cabinet, trailer, solar panels, and power supply) are either manufactured within the US or provided to our customers by other suppliers."

In response to our request for additional information, in your letter of September 26, 2002, you state:

The LED display boards to be imported by Captus International are to be used solely for the manufacture of road traffic control displays. Some of these displays are to be

mobile, in which LED boards are mounted on trailers placed at roadside; such trailers are moved from one road construction site to another as needed. Other traffic control displays are permanently mounted on frames at roadside and may stay in place for 10 years or more. At this time, Captus International plans to sell its LED boards to ADDCO, Inc., of St. Paul, Minnesota. ADDCO manufactures complete traffic control display assemblies.

ADDCO sells its traffic control products to state departments of transportation (DOT's) and to contractors that build roads for DOT's. In all cases, the displays are used strictly for control of vehicular roadway traffic.

There are many types of LED displays produced in the U.S.—not by ADDCO, but by other companies. Such displays include full color LED video screens for sports facilities and multi-color or one-color displays for commercial applications like shopping malls, banks, and casinos. It is theoretically possible to install our LED boards in one of the non-traffic control displays mentioned above. However, differences in the LED required for various applications prevent such activity from being practical.

LED's in our traffic control boards have very narrow 15- to 45-degree viewing angles that are used specifically to manage narrow roadway corridors; narrow cones of light save energy and minimize display cost, and they are all that is needed to deliver important messages to the motoring public. 15- to 45-degree angles are too narrow to use for the video screen or commercial sign applications mentioned herein; these most commonly employ viewing angles of 70 degrees and higher.

In 182314 Customs classified the LED display modules in subheading 8531.90.90, HTSUS, which provides for: "Electric sound or visual signalling apparatus * * * Other: * * * Other."

Issue:

What is the classification under the HTSUS of the LED display modules?

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 may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

8530	Electrical signalling, safety or traffic control equipment for railways, streetcar lines, subways, roads, inland waterways, parking facilities, port installations or airfields (other than those of heading 8608); parts thereof:
8530.90.00	Parts
*	* * * * *
8531	Electric sound or visual signalling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:
8531.90	Parts:
	Other:
8531.90.90	Other

Note 2 to Section XVI, HTSUS, provides in pertinent part as follows:

Subject to note 1 to this section, note 1 to chapter 84 and to 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, 8485, 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
* * *

EN 85.30 provides in pertinent part as follows:

This heading covers all electrical equipment used for controlling the traffic on rail-ways, hovertrain systems, roads or inland waterways * * *

* * * * *

(B) **Equipment for roads, inland waterways or parking facilities.** This group includes:

(1) **Automatic level crossing signals**, e.g., winking lights, bells, illuminated stop signs.

Electrical equipment for operating gates or barriers is also covered by this heading.

(2) **Traffic lights.** These usually consist of a system of coloured lights installed at cross-roads, junctions, etc. They comprise the actual light installations, control equipment and means of operating the controls. The lights may be hand-operated (lights operated by a traffic policeman or, on certain pedestrian crossings, by the pedestrian) or automatic (lights operated on a time basis, and lights operated by the passage of vehicles, either by means of photoelectric cells or by contacts placed on the road).

(3) **Electrical traffic control equipment for port installations or airfields.**

[All emphasis in original.]

EN 85.31 provides in pertinent part as follows:

With the **exception** of signalling apparatus used on cycles or motor vehicles (**heading 85.12**) and that for traffic control on roads, railways, etc. (**heading 85.30**), this heading covers all electrical apparatus used for signalling purposes, whether using sound for the transmission of the signal (bells, buzzers, hooters, etc.) or using visual indication (lamps, flaps, illuminated numbers, etc.) and whether operated by hand (e.g., door bells) or automatically (e.g., burglar alarms).

* * * * *

This heading includes, *inter alia*:

(A) **Electric bells, buzzers, door chimes, etc.** * * *

(B) **Electric sound signalling apparatus, horns, sirens, etc.** * * *

(C) **Other electrical signalling apparatus** * * *

(D) **Indicator panels and the like.** These are used (e.g., in offices, hotels and factories) for calling personnel, indicating where a certain person or service is required, indicating whether a room is free or not * * *

(E) **Burglar alarms** * * *

(F) **Fire alarms** * * *

(G) **Electric vapour or gas alarms** * * *

(H) **Flame alarms** * * *

[All emphasis in original.]

The LED display modules are either provided for in heading 8530, HTSUS, or in heading 8531, HTSUS. The text of heading 8531, HTSUS, contains the language: “* * * other than those of heading * * * 8530 * * *” Thus, if the LED display modules are described in heading 8530, HTSUS, they are classified therein and not in heading 8531, HTSUS. The text of heading 8530, HTSUS, includes: “* * * traffic control equipment for * * * roads.” EN 85.30 provides that heading 8530 covers all electrical equipment used for controlling equipment on roads. You describe the LED display modules as: “* * * designed to be incorporated into electronic displays that are used for traffic management on highways and other roads.”

Additional U.S. Rule of Interpretation 1(a) provides that the principal use is the controlling use with respect to tariff classifications controlled by use. Heading 8530, HTSUS, is a principal use provision which includes traffic control equipment. Based upon the facts submitted, we find that the subject LED display modules are solely or principally used as parts for traffic control equipment. See note 2(b) to Section XVI, HTSUS. Accordingly, we find that the LED display modules are provided for in heading 8530, HTSUS, and are classified in subheading 8530.90.00, HTSUS, as: “Electrical signalling, safety or traffic control equipment for railways, streetcar lines, subways, roads, inland waterways, parking facilities, port installations or airfields (other than those of heading 8608); parts thereof: * * * Parts.”

Holding:

The LED display modules are classified in subheading 8530.90.00, HTSUS, as: "Electrical signalling, safety or traffic control equipment for railways, streetcar lines, subways, roads, inland waterways, parking facilities, port installations or airfields (other than those of heading 8608); parts thereof: * * * Parts"

Effect on Other Rulings:

NY I82314 is revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

GAIL A. HAMILL,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

PROPOSED MODIFICATION OF RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO TARIFF
CLASSIFICATION OF A ROASTER OVEN

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed modification of ruling letter and revocation of treatment relating to tariff classification of a roaster oven.

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 Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of the Rival 18-Quart Roaster Oven and to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before January 3, 2003.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street, NW, Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Keith Rudich, Commercial Rulings Division, (202) 572-8782.

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 Customs 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 Customs 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 Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify a ruling letter pertaining to the tariff classification of the Rival 18-Quart Roaster Oven. Although in this notice Customs is specifically referring to one ruling, NY I80666, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service 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, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer’s reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer’s or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer’s failure to advise the Customs Service 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 their agents for importations of merchandise subsequent to the effective date of the final notice of this proposed action.

In NY I80666, dated April 23, 2002, set forth as “Attachment A” to this document, Customs found, among other things, that the Rival 18-Quart

Roaster Oven was classified in subheading 8516.60.60, HTSUS, as other ovens; cooking stoves, ranges, cooking plates, boiling rings, grillers and roasters, other.

Customs has reviewed the matter and determined that the correct classification of the Rival 18-Quart Roaster Oven is in subheading 8516.60.40, HTSUS, which provides for cooking stoves, ranges, and ovens.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY 180666, 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 (HQ) 965861, as set forth in "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: November 19, 2002.

GAIL A. HAMILL,
(for Myles B. Harmon, Acting Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, April 23, 2002.
CLA-2-85:RR:NC:N1:113 I80666
Category: Classification
Tariff No. 8516.60.6000,
8509.80.0095 and 8516.90.9000

MS. GILDA E. JENNINGS
K MART CORPORATION
*3100 West Big Beaver Road
Troy, MI 48084-3163*

Re: The tariff classification of a roaster oven and buffet server from China.

DEAR MS. JENNINGS:

In your letter dated April 8, 2002, you requested a tariff classification ruling.

The samples you submitted are a Rival 18-Quart Roaster Oven (item number R0180KW) and a Rival Buffet Server (item number BR200). The roaster oven has a removable steel cooking pan and a steel roasting rack. It features a 1450-watt temperature control range from 150 to 450 degrees to allow roasting, baking and cooking. The sample you provided also includes a bonus electric knife (item number 450-0505) inside the retail package. The Rival Buffet Server is composed of a steel lift-out tray with 3 removable steel dishes. It is specially designed to fit inside the Rival Roaster Oven to serve and keep food warm.

The applicable subheading for the roaster oven will be 8516.60.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for other ovens; cooking stoves,

ranges, cooking plates, boiling rings, grillers and roasters, other. The rate of duty will be 2.7 percent ad valorem.

The applicable subheading for the buffet server will be 8516.90.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for parts, other. The rate of duty will be 3.9 percent ad valorem.

The applicable subheading for the electric knife will be 8509.80.0095, Harmonized Tariff Schedule of the United States (HTS), which provides for other electromechanical domestic appliances with self-contained motor, other appliances, other. The rate of duty will be 4.2 percent ad valorem.

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

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist James Smyth at 646-733-3018.

ROBERT B. SWIERUPSKI,

Director,

National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:GC 965861 KBR
Category: Classification
Tariff No. 8516.60.40

MARK G. SUN
K MART CORPORATION
RESOURCE CENTER
*3100 West Big Beaver Road
Troy, MI 48084-3163*

Re: Reconsideration of NY I80666; Roaster Oven.

DEAR MR. SUN:

This is in reference to your letter of September 5, 2002, requesting that we reconsider New York Ruling Letter (NY) I80666, issued to you, by the Customs National Commodity Specialist Division, New York, on April 23, 2002. This ruling concerned the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a roaster oven. We have reviewed NY I80666 and determined that the classification provided is incorrect.

Facts:

NY I80666 concerns the Rival 18-Quart Roaster Oven (R0180KW). The roaster oven has an enamel-on-steel roasting pan and a removable steel roasting rack. The roaster oven is a 1450 watt, table top appliance with two carry handles. It has a dial temperature control ranging from 150 to 450 degrees to allow roasting, baking and cooking. NY I80666 also concerned a Rival Buffet Server and an electric knife. Only the roaster oven is at issue in this ruling.

In NY I80666, it was determined that the roaster oven was classifiable in subheading 8516.60.60, HTSUS, as other ovens; cooking stoves, ranges, cooking plates, boiling rings, grillers and roasters, other. We have reviewed that ruling and determined that the classification of the roaster oven is incorrect. This ruling sets forth the correct classification.

Issue:

What is the proper classification under the HTSUS of the subject roaster oven?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). Under GRI 1,

merchandise is classifiable 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 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:

8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:
8516.60	Other ovens; cooking stoves, ranges, cooking plates, boiling rings, grillers and roasters:
8516.60.40	Cooking stoves, ranges and ovens
8516.60.60	Other

Within Chapter 85, HTSUS, heading 8516, in pertinent part, provides for other electrothermic appliances of a kind used for domestic purposes. Review of both the HTSUS legal notes and the ENs indicates that neither defines the phrase “domestic purposes.” A tariff term that is not defined in the HTSUS or in the ENs is construed in accordance with its common and commercial meanings, which are presumed to be the same. *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 “domestic” is described as “of or relating to the household or the family.” *Merriam-Webster’s Collegiate Dictionary*, 10th, p.344, (1999).

After careful consideration of the information, dimensions, capacity, power and other features of the roaster oven, we conclude that the roaster oven is an electrothermic appliance belonging to a class or kind principally used for domestic purposes under heading 8516, HTSUS. See HQ 954781 (September 22, 1993).

Next, we must determine under which of the following subheadings the article is classifiable. EN 85.16, states that other electro-thermic appliances used for domestic purposes include “other ovens and cookers, cooking plates, boiling rings, grillers and roasters * * *” EN 85.16 does not provide direction as to what characterizes “other ovens” and “roasters.” As noted above, classification is in accordance with the GRI and the terms of the headings, with the guidance of the ENs, to understand the scope of the headings and GRI. Since the article cannot be classified pursuant to GRI 1 alone, *i.e.*, according to the terms of the heading, and since there is no disagreement that the roaster oven is classifiable under heading 8516, HTSUS, we look to GRI 6, which states:

“For legal purposes, the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.”

Subheading 8516.60.40, provides only for cooking stoves, ranges and ovens * * *.” Subheading 8516.60.60 provides for all remaining articles in subheading 8516.60, cooking plates, boiling rings, grillers and roasters.

The provision in heading 8516, electrothermic appliances of a kind used for domestic purposes, is governed by “use.” *Group Italglass U.S.A., Inc. v. United States*, Slip Op. 93-46 (1993). Classification based upon use is governed by the language of Additional U.S. Rule of Interpretation 1(a) which requires that:

“In the absence of special language or context which otherwise requires—

A tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use.”

To conclude that the roaster oven is classifiable in subheading 8516.60.40, HTSUS, the article must belong to a class or kind of goods for which the principal use is as an oven, *i.e.*, the oven’s principal use must be for cooking food like an oven. The term “oven” is not defined in the HTSUS or the ENs. In examining the common meaning of the term, we find

that “oven” is broadly defined in the *Merriam-Webster’s Collegiate Dictionary*, 10th Edition, p. 827 (1999), as: “a chamber used for baking, heating, or drying.” In HQ 956227, dated September 19, 1994, Customs relied upon a similar definition provided for in *Webster’s II New Riverside University Dictionary*, p. 837 (1984), that an oven is “[a]n enclosed compartment supplied with heat and used for cooking food and for heating or drying objects placed within.” See also HQ 953619 (June 23, 1993).

In NY F80111, dated December 1, 1999, Customs determined that the 18-quart portable “NESCO Roaster Oven” with cookwell, lid and “circle of heat” heating element within an enclosed compartment, an electrothermic domestic appliance nearly identical to the Rival roaster oven at issue here, was classifiable as an “oven”, under subheading 8516.60.40, HTSUS. In HQ 963678 (September 11, 2000), Customs cited with approval the decision in NY F80111, and stated that “even though that appliance was commercially known as a “roaster,” it also met the common meaning of the term “oven” as an enclosed compartment capable of cooking food.” See also HQ 954781 (September 22, 1993) (finding a countertop baking unit is an “oven” under subheading 8516.60.40, HTSUS). Therefore, since the instant roaster oven is nearly identical to the one in NY F80111, we find that the roaster oven at issue is classifiable as an “oven” under subheading 8516.60.40, HTSUS.

Holding:

The Rival 18-Quart Roaster Oven is classifiable under subheading 8516.60.40, HTSUS, as other electrothermic appliances of a kind used for domestic purposes; part thereof: Other ovens; cooking stoves, ranges, cooking plates, boiling rings, grillers and roasters; cooking stoves, ranges and ovens, other.

NY I80666 dated April 23, 2002, is modified as to this merchandise.

MYLES B. HARMON,
Acting Director,
Commercial Rulings Division.